Licenſed, and Entered according to Order.

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OBSERVATIONS
CONCERNING THE
DOMINION
AND
SOVEREIGNTY
OF THE
SEAS:
BEING
An ABSTRACT of the *MARINE AFFAIRS* of *England.*

By Sir *PHILIP MEDOWS*, Knight.

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TO THE READER.

THE *Dominion of the Sea, as 'tis moſt apt to be made the fair Colour, and ſpecious Pretence, to a War, betwixt* England *and* Holland, *when the Real Cauſes of ſuch War are hidden and remote; ſo nothing will ſo effectually preſerve a laſting Union between Them, by hindering the Root of Diſcord from growing again, as a true Knowledge, and right Underſtanding of that Matter. About which, there are many Traditional Miſtakes, and Popular Errors, too currant among Us, and ſuch as are not of a ſimple and innocent Nature, but very dangerous, and of evil Conſequence. The Conſideration whereof, gave the firſt occaſion to the following Diſcourſe, which was Compoſed ſeveral Years ſince, was Read and Preſented to His late Majeſty King* Charles *the Second, and well accepted by Him; and has ſince*

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remained a Manuſcript in the hands of ſeveral Perſons of Quality. And though it might receive a new Turn, and Air, more accommodate to the Preſent State of things; and though the Time when it was written, the Perſon for whom, and the Niceneſs of the Subject it ſelf, obliged the Author to more of Caution and Reſerve, than perhaps would now be needful; yet He was not willing to make any Alterations in it, chuſing rather to ſpeak the Language of Truth, *than of* Times; *for what was once True, is always ſo, though not always equally fit to be made Publick. But ſurely now, if ever, 'tis ſeaſonable to remove all Obſtacles and Impediments out of the way of a good Underſtanding between the two Nations, when their moſt intimate Union and Conjunction is not only, as at other Times, highly expedient, but abſolutely neceſſary.*

THE PREFACE, SHEWING THE Author's Deſign.

THE following Diſcourſe may poſſibly, upon a ſlight and ſuperficial view, ſeem to have ſome tendency towards the diminution of the Rights of *England*, and conſequently the enlargement of thoſe of other Governments; but upon a ſerious and deliberate Peruſal, there will not appear any juſt Ground for ſuch Imputation. 'Tis, doubtleſs very commendable in a Subject, if he can with ſound Judgment, and convincing Reaſon, advance the Pretenſions of his Sovereign amongſt Foreign Nations. If it be the part of a good Judge, *Ampliare Curiam*, tis much more of a good

good Subject, *Ampliare Coronam:* For we all ſhine in the Glory of the Crown that is over us, and even private perſons have ſomething of Luſtre reflected on them, from the Honour and Grandeur of the Monarchy, under which they live. Upon which account, Mr. *Selden* has excellently well deſerv'd of the Publick, by heightning the Sea-Sovereignty of the Crown of *England*, in his Learned Book, entituled, *Mare Clauſum*; a Treatiſe ſo comprehenſive of what can be ſaid on that Argument, that he, who ſhould now write of the ſame, would certainly incur the old Cenſure, of writing an Iliad after *Homer.*

But if all the Claims and Pretenſions of the Crown of *England*, ſupported by the Authorities and Allegations produced in that Book, ſhall be vouch'd as the proper Standard and Meaſure of Right and Wrong betwixt Us and other Nations; if the Controverting thereof by Them, ſhall be eſteemed by Us as an Invaſion and Uſurpation, and conſequently the juſt cauſe and foundation of a War: If what is well written muſt be fought for too, not being to be gain'd, but by a longer Tool than a Pen, the King of *England* will unavoidably be caſt upon this hard *Dilemma*, either of being involved in endleſs

leſs and dangerous Quarrels with all his Neighbours abroad, or of having his Honour and Reputation proſtituted at home, as tamely ſuffering the beſt Jewels of his Crown to be raviſhed from it, and the Regalities thereof, tranſmitted to him from his moſt noble Progenitors, to be uſurp'd by Foreigners. Nor does the Miſchief ceaſe here, for in caſe he ſhould at any time enter into a War, for the more vigorous aſſerting and maintaining thoſe Pretenſions, and they not be included in the Terms and Conditions of the following Peace, the Inference will be this; That he was ſo far worſted in the War, as to be conſtrained to buy a Peace, if not by a total abandoning of them, yet at leaſt by a temporary Receſſion from thoſe Pretenſions.

Let me add one Conſideration more; If a War betwixt *England*, and any other Kingdom or State, be grounded and ſtated upon a Sea-Dominion, by help of this Advantage, an Enemy will gain the Weather-gage of us, and derive from it a conſiderable Benefit to himſelf; *Hoc Ithacus velit*— A *Dutch*-man will deſire no better: For, by this means, we ſhall diſoblige and diſaffect all our Neighbours to our Cauſe and Quarrel, at ſuch a time, when we moſt need their Friendſhip and Aſſiſtance: This will awaken Fears and Jealouſies,

ſies, and ſtrongly alarm them to an early ſecuring of their own Navigation and Commerce, againſt thoſe who would impropriate the Seas. They will not ſo much regard the Juſtice of our Cauſe, as the Conſequents of our Succeſs, and will be ſure to range themſelves with Heart or Hand, or both, as occaſion ſhall require, on that ſide, to which they ſhall be invited by a common and complicate Intereſt: It will not be a War betwixt this Prince and That, betwixt *Holland* and *England*, but betwixt the Continent and an Iſland, and the Queſtion will be briefly this, Whether the Iſland ſhall have the Sea to her ſelf, or whether the Continent ſhall have ſhare with her? As this is conſonant and agreeable to Reaſon, to ſuppoſe that it will be ſo, ſo 'tis verified by Experience, that in Fact it has been ſo. We need look back no farther than the Year 1665. *England* was then in open War with *Holland*, and, as previous thereto, the Parliament granted a Royal Aid, the end whereof is publickly declared in the Preamble of the Act, *viz.* *To equip, and ſet out to Sea, a Royal Navy, for the Preſervation of His Majeſties ancient and undoubted Sovereignty and Dominion in the Seas.* This was exactly calculated for the Meridian of *England*, it ſerv'd to inſpire our Captains

An. 16 & 17 *Car.* II.

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and Officers with Honour, to animate our Seamen with Courage, to diſpoſe the whole Body of the People with Chearfulneſs and Unanimity, to undergo ſo mighty a Supply, anſwerable to the Greatneſs of the Undertaking. But it ſerv'd not to ſo good Effects beyond Sea, as ſoon appeared, for the Balance of Succeſs had no ſooner inclined to *England*, by that ſignal Victory, obtain'd under the happy Conduct of *His* then *Royal Highneſs*, over the *Dutch Fleet*, commanded by Lieutenant-Admiral *Opdam*, but *France* ſtood over to *Holland*, *Denmark* was following, and had the War continued, and the Series of Succeſs not been interrupted by the Fatalities of the Plague, Fire, and other Accidents, by occaſion whereof a Peace intervened, there had at that time been as formidable a Confederacy and Conjunction formed againſt *England*, as that at *Cambray* againſt *Venice*. *An.* 1665. *An.* 1508.

To remedy the ſaid Inconveniences, and obviate the like, I thought it uſeful in the following Diſcourſe, carefully to diſtinguiſh betwixt the Queſtion of Right, and the Queſtion of Fact; betwixt the Pretenſions of the Crown of *England*, and the Poſſeſſions of it; betwixt what it has continually Claim'd and Demanded

as an ancient Right, and what it has been actually ſeiſed of, by a long, peaceable, and uninterrupted Enjoyment, which implies a Conſent and Acknowledgment on the part of other Nations. The later of theſe, is the true Touchſtone of Wrong and Injury, for what has been anciently claim'd, may have been as anciently denied, and ſo remain *Lis pendens*, a Queſtion undecided: But what has been peaceably Enjoyed, and thereby paſſed into an acknowledged Right, afterwards to detain or controvert, is a manifeſt Injury and Uſurpation. And by this, we ſhall eaſily diſcern, whether the Crown of *England* maintains its Ground, or whether it has loſt any thing of what it formerly had, by new Encroachments and Diſſeiſins, ſuch as may furniſh Matter for a juſt Reſentment and Vindication. In the mean time, the Pretenſions of the Crown ſtand as they did, what they were, that they now are, no diminution of them, no derogation from them. 'Tis Courage in a Nation ſtrenuouſly to maintain their own, and 'tis Juſtice rightly to diſtinguiſh their own, and the beſt Temper of Government, is, neither to do a Wrong, nor take it.

I thought it needful alſo to examine the accuſtom'd Salutation at Sea, by the Flag and Topſail, and to endeavour to clear the true ſignificancy and import of it, and the rather, becauſe it has been the occaſion of Spilling much Blood in *Europe* within theſe Forty Years laſt paſt, and may be of the Effuſion of more, if a timely Remedy be not applied to ſo growing an Evil, which is almoſt become a Common Make-bate betwixt the *Europæan* Nations. And all this, partly by over-ſtraining a fine Thread, and laying greater weight upon it than it will bear; but chiefly for want of a certain and determinate Regulation, for whil'ſt Sea-Captains are, by the generality of their Inſtructions, referred only to former Uſe and Cuſtom, and what that is, not diſtinctly known, many Irregularities and Indiſcretions enſue, not unlike to thoſe of ſome Gallants at Land, who think it a Point of Honour to quarrel for the way, or juſtle for the Wall, with all they meet; but with this difference, theſe do it only to the endangering their own Perſons, but the others to the engaging their Maſters many times in unneceſſary Feuds and Diſputes.

This is the Mark, at which the following Diſcourſe is levell'd, and by theſe Meaſures it has been

been guided. And the whole Deſign of it tends to this, to prevent needleſs Quarrels, and ſuch as are ſtated to Diſadvantage abroad, and to juſtifie our King's Reputation againſt Cenſure and Reflection at home. That whil'ſt He preſerves the publick Peace, His Honour may not be impeach'd, nor yet His Honour (of which He has ſo quick a ſenſe) be made uſe of through miſtaken Appearances to imbroil his Peace; But be left free to Steer an even Courſe betwixt the tender Regards of the one, and the prudential Conſiderations of the other. In order to which Deſign, it was neceſſary for me to remove ſome Obſtacles and Impediments, as I found them in my way. To clear the true Notion of Dominion and Sovereignty in all the chief Branches and Dependencies of it. To trace Matters of Fact through the National Treaties made betwixt our Kings and other Princes. To vindicate ſome Paſſages in our Books and Rolls from Miſtakes and Miſapplications. And all this without any Vanity of refuting Mr. *Selden*, (who if he has extended the Rights of the Crown of *England* to the wrong of other Princes, *Viderint ipſi*, let them look to it, whoſe concern it is.) But merely in proſecution of the Deſign of a Diſcourſe, which, beſides that it Aſſerts the Ho-

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nour of our King, by ſhewing in Fact, as to Sea-Matters, how He Maintains whatever his Anceſtors have Enjoyed, may, as is humbly conceived, be further ſerviceable for theſe two Ends:

Firſt, To put a ſtop to ſome popular Errors, which prevail to the great Inconvenience of the King, by continual Prompting and Expoſing Him upon pretended Points of Honour to a perpetual Strife with all His Neighbours, for things not ſafe to be inſiſted on, never enjoyed, nor likely ever to be obtain'd.

Secondly, To pacify and allay thoſe Jealouſies, which diſpoſe Foreign Princes upon all Occaſions to enter into Confederacies prejudicial to the Intereſts of *England*; For as it has been the Policy of *France* in this laſt Age, to load *Spain* with an Imputation of affecting an Univerſal Monarchy: So 'tis the Practiſe of *Holland*, to charge *England* with an Affectation of a Sea-Monarchy, to the belief of which we too unwarily contribute; And under this Covert the *Dutch* advance their own Deſigns, as the *French* have done theirs under the former.

As

As to the Method of this Treatise, it is divided into these Four General Heads.

I. *What is meant by the Dominion and Sovereignty of the Seas, and what the true Notion or Idea of it is.*

II. *What Things are incident to this Dominion, and inseparably follow it.*

III. *What the Salutation at Sea by the Flag and Top-sail signifies, and whether it has any relation to the Dominion of it.*

IV. *The whole Matter of Fact betwixt the Crown of* England, *and Foreign Princes and States, in the several Incidents of Sea-Dominion, is distinctly examined, and impartially reported.*

These General Heads contain several Subdivisions, concerning the *Quatuor Maria. The Laws of* Oleron. *The Roll in the Tower* De Superioritate Maris. *The Fishery licens'd and limited*, &c.

OBSER-

OBSERVATIONS

CONCERNING THE

Dominion & Sovereignty

OF THE

SEAS, &c.

IT has been learnedly argued on both ſides, whether there be any juſt Dominion or Property in any Sea: For, in the Primitive and Natural State of Things, antecedent to humane Pact and Conſent, the whole Earth was common and undivided unto all Mankind; but then, as it was common, ſo it was without culture, Men living upon the ſpontaneous Productions of it, in an eaſy and innocent, but rude and ſimple manner. Their Dwellings were Tents; their Drink, Water; their Bread, Roots and Nuts; their Clothing, the Bark of Trees, or Skins of Beaſts. Wherefore, to better the condition of Humane Life, by the Encouragement of ingenious Arts and induſtry, Conſent, either expreſs, or tacit, introduced Occupancy and Property, that every man might enjoy to himſelf, as a Reward, the benefit of his own Skill and Labour. Then were Houſes built, Fields ſown with Corn, Vineyards planted, and the manner of Living heightned by progreſſive Steps and Gradations, from the plain ſtate of ſimple Neceſſity, to a degree of Convenience; from Convenience, to Delight; from Delight, to Luxury. But foraſmuch as the wide Sea is

How Dominion was firſt introduced.

Privata nulla Naturâ, ſed aut veteri occupatione, aut, &c. Cic. *de Offic. l.* 1.

Nam propriæ telluris herum Natura nec illum, nec me nec quenquam fecit. Hor. 2. *Sat.* 2.

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not capable of Cultivation, or Improvement, by Art or Induſtry, it may therefore be reaſonably ſuppoſed, never to have been impropriated by conſent, but left to its Primitive and Natural Communion.

If it be objected, That ſundry People and Nations have been Lords of ſeveral Seas; as the *Athenians*, *Carthaginians*, *Rhodians*, and *Romans*: To that, will be replied, That this was Force and Empire, without Property; an Uſurpation, not a Right; and that an armed Conqueror, by the ſame Rule, that he diſpoſſeſſes what is proper, may impropriate what is common; only with this difference, That 'tis extenſively more unjuſt to debar many from their common Right, than to diſſeize a ſingle perſon of his private Inheritance.

I ſhall not enter upon the Merits of the Cauſe, as not being to my purpoſe, but as to the forementioned Argument, how plauſible ſoever, it concludes fallaciouſly; as if that, which is but *Cauſa una*, one Cauſe, were *Cauſa unica*, the only Cauſe; whereas there may be other Reaſons and Conſiderations, beſides that of encouraging Induſtry, why Communion was chang'd into Property, and thoſe equally extendible to Sea, as well as Land. Poſſibly, the conſent of ſome Nations may deveſt themſelves of a joint Right, and inveſt it in one, in order to a publick Benefit. And this is the beſt part of that Title, which the *Venetian* has to the Gulph, which being a particular and remarkable Caſe, it will not be amiſs briefly to touch upon it, in the following Paragraph.

Of the Dominion of the State of *Venice* in the Gulph.

The *Ottoman* Power extending it ſelf into *Europe*, to the ſubverſion of the Eaſtern Empire, conquering all *Greece*, with *Macedon* and *Epirus*, and penetrating to the very Banks of the Gulph, almoſt within ſight of *Italy*: The *Italian*, and other Neighbouring Princes, to interpoſe the beſt Skreen they could, betwixt themſelves and the near approaching Danger, did, by a concurring Intereſt, impatronize the *Venetian* in the Gulph, who, by reaſon of their potency in Shipping, and the immediate Concern of their own imminent Peril, were the moſt proper State to be made the Bulwark of *Chriſtendom* at Sea. Thus the Pope, by the Ceremony of a Ring, wedded their Duke every Year to the *Adriatick*. And in the General Council of *Lions*, in the pre-

Flav. Blond. Decad. 2. l. 8.

preſence of the Ambaſſadors of ſeveral Princes, upon Complaint made againſt the *Venetians*, for laying Impoſitions upon all Ships ſailing within the Gulph, Judgment was given in favour of the Republick, upon conſideration of their guarding that Sea againſt the Courſes of the Pirats and *Saracens*. And the Neighbouring Princes would not ſo much as ſend a Galley, without asking leave of the Senate, which reſpect was ſo providently managed by that wiſe Council, the better to aſſert their Marine Sovereignty, That ſometimes they would give leave under ſome Reſtrictions and Conditions, as in the caſe of the Siſter of *Uladiſlaus* King of *Naples*; ſometimes they denied leave, as in the caſe of *Mary*, Siſter of *Philip* King of *Spain*, in the year 1620. whom the Senate would not permit to be Tranſported from *Naples* to *Trieſte*, in the Galleys of *Spain*, but in thoſe only of the Republick. But 'tis to be conſidered alſo, that the Gulph of *Venice* is not a wide Sea or Ocean, nor a ſtreight or narrow Sea, called in Latin *Fretum*, but a *Sinus*, a Bay or Gulph, cloſed at one end; in the bottom whereof, the City of *Venice* is ſcituate, upon ſeveral ſmall Iſles or Inſulets. The Seas of *England* are of a different Nature and Condition, they are open both above and below, and they are the midway-paſſage betwixt all the Northern and Southern Nations. The Wares and Merchandiſes of *Muſcovy*, *Poland*, *Sweden*, *Denmark*, *Norway*, *Germany*, and the *Netherlands*, are conveyed by Shipping to *France*, *Spain*, *Italy*, the *Levant*, *&c.* and ſo back again from the South to the North, through the North-Eaſt Sea betwixt *England* and *Germany*, and the Weſtern Channel betwixt *England* and *France*, which ſhews, of what Influence and Import this Dominion, on the part of *England*, is, to the reſt of the World.

Joan. Palat. de Domin. Mar. l. 2. c. 6.

CHAP. I.

What is meant by the Dominion and Sovereignty of the Seas, and what the true Notion or Idea of it is.

BEfore I proceed, it will be neceſſary, firſt, to explain the Terms, what is meant by *Dominion*, what by *Sovereignty*, and what by the *Seas*; leſt we loſe things in Words, and take up with Names, inſtead of Realities. By *Dominion*, is to be underſtood Property, (for ſo is that word *Dominion* always taken in its legal ſenſe) or a Right of poſſeſſing and uſing any thing as ones own, and of excluding all others from a promiſcuous and equal uſe thereof. That is mine, which is ſo mine, as 'tis not anothers, *eodem modo*, in the ſame manner as 'tis mine: And this Property is twofold, either Publick or Private, for Proper is not oppoſed to Publick, but to Common. Publick Property, excludes Communion amongſt Nations; Private Property, Communion amongſt Perſons. For, as particular Mannors and Tenements divided by their reſpective Bounds and Buttles, are the private Property of particular Perſons, which they poſſeſs privatively of other perſons. So Countries and Territories, like greater Mannors, divided each from other by Limits and Borders, are the publick Property of Nations, which they poſſeſs excluſively one of another. The whole Territory of *England*, is the publick Property of the *Engliſh* Nation, and this Property excludes Aliens, or all born out of the King of *England*'s Liegeance, from taking real Inheritances, or holding Lands and Tenements any where in *England*. The Supreme Rule and Juriſdiction in and over this Territory, is that which we call Sovereignty, and is the publick Property of the King, in Right of his Crown of *England*: He is ſole Lord of this great Mannor, and all the Lands in *England* are holden, either mediately or immediately of him. And as he is Head,

Head, and Chief Ruler, he bears within him the Perſon of the whole Nation, and thus all *England* is his Territorial Property. And the Royal Demeans and Poſſeſſions annexed to the Crown, as the publick Revenue thereof, and as diſtinct from the private Poſſeſſions of particular Perſons, are his Patrimonial Property. He has them in his publick and politick Capacity as King, not in his private and natural as an individual Perſon; for Kings, as well as Subjects, may have Poſſeſſions in a private Right, as the King of *Egypt*, who bought the Lands of his Subjects for Corn, He had not thoſe Lands in Right of his Crown, as King, for he was King before he had them.

I have done with thoſe two Terms, Dominion and Sovereignty. I paſs to the third, and that is, the Sea or Seas. Whereby Sea is not to be underſtood, ſuch a collective Body of Waters, ſingly and ſolely as Waters; for the moveable inconſtant Waters, whither of Sea or River, barely as ſuch, are not a capable Subject of Property; but as Waters contain'd within a fix'd and certain boundary, and ſupported by a ſtanding Bottom. In the Firſt Senſe, no Man goes twice into the ſame River, in the Second, a River is the ſame in a Succeſſion of Ages. And in this later Senſe, the Sea, as it is a ſolid *Alveus*, or Receptacle of Waters, contained within a certain boundary, is as truly and as properly Territory, as the Land. 'Tis *Territorium à Terra*, from the ſtanding bottom of Earth, by which the Waters of it are ſupported, and from the unmoveable Shoars of Earth, within which thoſe Waters are contained.

Having ſufficiently explain'd the Terms; if one now ſhould ask me, What is meant by the Dominion and Sovereignty of the Britiſh Seas, which the Kings of *England* are ſaid to have continually claim'd, in Right of their Crown of *England*. I would Anſwer, By Dominion is meant the publick Property of thoſe Seas, as part of the Territory of their Realm of *England*, and conſequently all other Princes and People excluded, not from all, but from an equal uſe of them. By Sovereignty is meant, that ſole Supreme Rule and Juriſdiction, which the Kings of *England*, Succeſſively have over the whole Realm of *England*, of which thoſe Seas are a Part. If he ſhould further ask me, how does this Right in the Crown of *England* appear, and by what-

what proofs is it evidenced? I would refer him to Mr. *Selden*, whoſe Proofs and Arguments, whether they come up to the height of ſuch a Dominion as I have here deſcribed, which they ought to do, or elſe will fall ſhort of the Mark, is not for me to ſay, I leave that to the Judgment of his Reader, wiſhing they were ſo convincing and demonſtrative, that all other Nations as well as our own, would reſt ſatisfied therewith. But if he asks me of matter of Fact, whether the Kings of *England* have for any long time been in the actual and peaceable Poſſeſſion of ſuch Dominion, as a Right acknowledg'd by the expreſs or implied conſent of other Nations, this I ſhall examine by and by.

But whereas I hinted before, that the Dominion of the Crown of *England* in the *Britiſh* Seas, did not exclude other Princes and States from all uſe, but from an equal uſe of thoſe Seas, this needs a little Explication. In order to which, 'tis to be conſidered, that as all Property firſt began by Humane Fact and Conſent, antecedent to which was Communion: So in this conſent was implied a Reſervation and benign Exception of ſuch uſe, as might be of great benefit to others, without any conſiderable Damage to the Proprietor; A River, as a Fiſhery, is a private Dominion, no Man may Fiſh there without the Owner's leave, becauſe it would be a diminution of his Profit; If Navigable, as a Way, 'tis Publick to all the Subjects of that Prince, who is Lord of the Territory; As 'tis running Water, 'tis common to Man and Beaſt to Drink of it, and Waſh with it. A Field is a private Property, but the Market-Path over it is publick, and when it was firſt made a Property, it was with reſervation of a Path. For Fields were not diſtinguiſh'd by Metes and Bounds to their reſpective Owners, with deſign to confine every Man to his own home, but with exception of Liberty to paſs and repaſs in a harmleſs manner, over each others Properties in purſuance of their lawful Occaſions. The Sea, ſay we, is the publick Property of the Crown of *England*; but yet as 'tis a Way, 'tis common to the peaceable Traders of all Nations. A Path over a Field is of ſome damage to the Soil, though compenſated with a greater utility, but a way over the Sea is of no damage to the Water; and the Sea being a fluid Body is all Path, where

Quid prohibetis aquas? uſus communis aquarum eſt. Ovid.

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a Ship can Sail, and a common Highway from one Nation to another. And this is ſo far from being a damage to any, that 'tis highly beneficial to all; for as there is no Man ſo Self-ſufficient, as not to need the continual help of another, ſo neither is there any Country, which does not, at ſome time or other, need the Growth and Productions of another.

Well then, ſince 'tis the Nature of Property in general, ſo to make a thing mine, as 'tis not anothers, *eodem modo*, in the ſame manner as 'tis mine; And the Dominion of the Sea in one Prince does not exclude another from all uſe of it; It may not be unfitly demanded, what are thoſe Proper Uſes, which are ſo peculiarly reſerved to the Crown of *England*, in right of ſuch ſuppoſed Dominion, as that all other Nations are excluded from them? And this will lead me to the Second General Head which I propoſed, *viz.*

CHAP. II.

What Things are incident to the Dominion of the Sea, and inſeparably follow it.

I Anſwer, theſe three Things.

1. A Right of Excluding all foreign Ships of War from paſſing upon any the Seas of *England* without Special Licenſe for that purpoſe firſt obtain'd.
2. The ſole Marine Juriſdiction within thoſe Seas.
3. An appropriate Fiſhery.

Firſt, All Foreigners are Excluded by virtue of ſuch Dominion from a general Liberty (without firſt asking and obtaining ſpecial Licence) of putting out upon the *Britiſh* Seas Ships fitted and Equipp'd for War, when and in what Number they pleaſe. The reaſon is plain, becauſe 'tis the Territory of another Prince; And to enter it without leave with an armed Force, and in ſuch Numbers, as may juſtly occaſion Fear and Suſpition of Danger, is a publick Hoſtility. The *Perſians* were reſtrain'd by Pact and League made

made with the *Athenians*, from entring with armed Veſſels within the *Cyanean* and *Chelidonian* Iſlands; but had the *Perſians* acknowledged the Territorial Property of thoſe Seas to have been in the People of *Athens*, there had been no need of ſuch Pact, for in the reaſon of the thing it ſelf abſtracted from Covenant, it had been as much an Hoſtility to have entred thoſe Seas with a Fleet of War, as to have Landed an Army upon *Attica*, for both were equally the *Athenian* Territory.

Plut. pi Cim.

Secondly, From the Juridical cogniſance of all Cauſes, Civil and Criminal, for and concerning all Matters and Things done and committed in and upon thoſe Seas, the Perſons whom thoſe Cauſes concern there abiding. The Reaſon is, becauſe Juriſdiction is an Eſſential and Inſeparable part of the Sovereignty, which a Prince has within his own Territory. All Foreigners, whil'ſt in it, owe him a local Obedience, and are triable by his Laws, and before his Judicatories only as the ſole Supreme Judge of the place. And for any to Appeal from him, is to ſet a Superiour over him; and to exerciſe Juriſdiction within his Territory, without an Authority derived from him, is to King it in another's Kingdom, to ſet up Co-ordinate Supremes within one Realm in Matters of the ſame Civil Cogniſance. Which is as much a Contradiction, as to affirm many Infinits, for as the Infinity of one makes all others finite; ſo the Supremacy of one makes all others Sub-ordinate.

Thirdly, From a Right of Fiſhing within thoſe Seas, without ſpecial Licence firſt obtained from the Lord of the Seignory, and under ſuch Conditions and Conſiderations as he ſhall think fit. The reaſon is, becauſe this is the Patrimonial Property of his Crown, and the Fiſhery is in a manner all the profit that his great Sea-Territory yields him. The Dominion of the Sea, without an appropriate Fiſhing, is as if a Vineyard ſhould be a Property, but the Grapes common. Or like an Eſtate or Poſſeſſion of Land, veſted in one, to the uſe of another, and ſuch we had many here in *England*, till a good Statute executed the Poſſeſſion to the uſe, and ſo conjoyn'd what ought not to have been divided. Nor can it be alledg'd, that a promiſcuous Fiſhing in the Sea is of no damage to the Proprietor,

27. *H.* 8. *cap.* 10.

prietor, for admitting the multitude of Fiſh to be ſo great, as to ſuffice all Mens uſe, which is not always true, yet this will abate the price of the Market for Sale, nor can the Fiſhery be Farm'd out, if occaſion be, at ſo good advantage. For ſo we read that the Eaſtern Emperour let out to Farm the Fiſhing in the *Ægæan* Sea near *Byzantium*, at the yearly Rent of Ten thouſand Crowns, and ſometimes more. *Niceph. Greg. l. 9.*

I am ſenſible, that what I have already ſaid, and part of what follows will be thought by ſome to run too much into the Niceties of Law and School, and that 'tis a Thread ſpun too fine. But without the help of ſuch a Thread, how fine ſoever it may ſeem, we ſhall wander without end in a Labyrinth of Phraſes and forms of Speech, we ſhall loſe Things in the ambiguity of Words, and miſtake Shadows for Subſtance. He who affirms a Sea-Dominion, and by it underſtands any thing leſs than Property, embraces a Cloud for *Juno*. To ride actual Maſter at Sea with a well Equipp'd Fleet, or to have ſuch a Plenty of Naval Stores in conſtant readineſs, as ſhall be ſufficient to anſwer all Occaſions, is not the Dominion of the Sea; This is Power, not Property, though the Property and Honour too, eſpecially of an Iſland Prince, are beſt ſecured and ſupported by ſuch Power. Neither is the Honour of the Flag, and of requiring Foreign Ships to lower their Sails, and do a Reverence any part of the Dominion of the Seas, nor has any relation to it, as I ſhall ſhew preſently. Much leſs do ſuch uſual Expreſſions and Words as theſe, the *Britiſh* Seas, the Sea of *England*, *Our Seas*, import any legal Dominion, but only denote a Geographical Deſcription, as *Mare Flandricum*, *Mare Normannicum*, *Mare Aremoricum*, *Mare Aquitanicum*, and a hundred others do. And nothing more uſual, than for Seas to receive their Denominations from the Shoars they rowle upon, and *Our Seas* are the Seas which rowle upon our Shoars. But that which occaſions the ordinary and moſt frequent Miſtake, is the word *Dominion*, it being equivocal and of a doubtful ſenſe, as the Latin words *Imperium* and *Dominium* likewiſe are. For ſometimes they are taken ſtrictly and legally, denoting Property, and thus *Imperium* and *Dominium* are the ſame with publick and private Property, according to that of *Seneca*, *Rex omnia poſſidet Imperio, ſinguli Dominio*, The King poſſeſſes all by his Sove- *Ser. de Benef. l. 8. c. 5.*

reignty, and yet particular Persons have their private possessions too. But then again, sometimes they are taken loosely and Historically, denoting Power only and Command, as *Pompeio datum est Imperium maris intra Herculis columnas*, The *Roman* People gave *Imperium Maris* to *Pompey*, the Command of the Sea, not the Property of it; They Commissioned him their Admiral or General at Sea, as far as the *Streights Mouth*. Thus some of the *Roman* Emperors were intitled *Terræ Marisq; Domini*, Lords or Despots of Sea as well as Land, so is *Vespasian* called by *Josephus*; And yet they were but Lords in Power, not in Property; for by the very Text of the *Roman* Law, as it was afterwards compiled by *Justinian*, the Sea is accounted as common as the Air, and that by natural Right. And thus some Men understand no more by Dominion of the Sea, than what our usual Sea-phrase imports, to ride Master at Sea, or of the Sea. But 'tis one thing to be Master of it in an Historical and Military sense, by a Superiority of Power and Command, as the General of a victorious Fleet is, another thing to be Master of it in a legal sense, by a possessory Right, as the true Owner and Proprietor of it is. In like manner we say of a General at Land, that he is Master of the Field; Master of it in Power, not Owner of it in Title. Property is a fix'd and permanent Right, a man may lose his Seisin, and yet retain his Title, an Usurper is no Owner, but Power is flitting and transitory, and so soon as the Possession is lost, the Power is gone. If we confound Power and Property, *Potestas & Proprietas*, by a promiscuous use of the one for the other, the Dominion of the Sea will be like that of our *Cornishmens* Ball at one of their Hurlings, 'tis his who can catch it, so long as he can keep it, till another gets it from him.

Jure naturali communia sunt omnium, aer, aqua profluens, & Mare. Inst. de Rer. Div. Par. 1.

I shall add one Quotation more, out of the *Roman* Story, not wholly unworthy observation: *Tacitus* says, *Italiam utroq; mari duæ classes Misenum apud & Ravennam præsidebant*, Two Fleets guarded *Italy* on both Seas, one at *Misenum*, the other at *Ravenna*. And *Suetonius* ascribes the first Institution thereof to *Augustus*, *Classem* Miseni *& alteram* Ravennæ *ad tutelam superi & inferi Maris collocavit*. The Fleet at *Misenum* was for the safety of the Upper Sea towards *Gaul* and *Spain* Westwards, the other at *Ravenna*, was for the safety of the Lower Sea,

Tacit. Annal. 4.

Sueton. Vit. Augusti.

Sea, towards *Epirus* and *Greece* Eaſtwards. Our Kings in *England* have ſo exactly followed this Model of *Auguſtus*, that one would think, they had copied from his Original. Has *Italy* an upper and lower Sea? So has *England*; Our upper Sea is that Northwards betwixt *England* and *Germany*; Our lower Sea that South Weſtward betwixt *England* and *France*. Had the *Roman* Emperors their diſtinct Fleets, one for each Sea: Our Kings had their diſtinct Admiralties, one for the North, and another for the South, reckoning North and South from the mouth of the River *Thames*. Their Fleets were *Ad tutelam maris*, ſays *Suetonius*, for the ſafety of the Sea. Ours *ad Cuſtodiam*, ſay our Records, for the Cuſtody or ſafe keeping it, from being infeſted by Pirates (a Trade frequent in former Ages amongſt the Northern People) and conſequently for ſecuring the Navigation and Commerce of their Subjects and Allies. The two Fleets did *præſidere Italiam*, ſays *Tacitus*, guard *Italy* as a Gariſon Town does a Frontier. Ours were alſo called, *Naves Præſidiariæ*, Garriſon-ſhips, to guard the open Shoars, and Landing places of a large Iſland, againſt the Hoſtile inſults and deſcent of Foreigners. They are our moveable Garriſons, our floating Caſtles, fifty of which will defend an Iſland better then five thouſand ſtanding ones built round the Shoars.

Beſides the two Admiralties of the North and South, the Books of our municipal Laws make frequent mention of the *Quatuor Maria*, the four Seas, environing *England* to the Eaſt, Weſt, North, and South. For *England*, as diſtinct from *Scotland*, is a Peninſula, bounded on the North by an Iſthmus of Land and the Northern Sea. And 'tis obſervable, that to be *infra* or *intra quatuor Maria*, within the four Seas, is in conſtruction of our Law to be within the Kingdom of *England*; and to be *Extra quatuor Maria*, out of the four Seas, is equipollent to being out of the Kingdom of *England*. And 'tis to be further noted, that not only he who is upon the Land, but he alſo who is upon the Sea, is in our Law ſaid to be *intra Mare*, within the Sea, becauſe he has Sea ſtill before him, till he be arrived on the oppoſite Shoar, and then and not till then he is *Extra Mare*, out of the Sea, or beyond it. And when an *Engliſhman* is upon the other Shoar, he is then within the

Of the *Quatuor Maria*.

Ligeance of another Prince, and therefore out of the Kingdom of *England*; but whilſt upon the Sea, he is within the Ligeance of his own Prince, and therefore within the Kingdom of *England*. For *England* is not always taken ſtrictly for the Land of it, in which ſenſe the Iſles of *Jerſey*, *Guernſey*, and *Mann* are no part of *England*, but ſometimes comprehenſively for all the Dominions of it, and in Legal Underſtanding, he is within the Kingdom of *England*, who is within the local Ligeance of the Crown of *England*.

The uſe our Law makes of this Technical Phraſe, or Artificial form of Speech, *intra* or *extra quatuor Maria*, within or without the four Seas, is this; Partly to eſſoin or excuſe Men from Appearance in Courts upon Writs of Summons; for if it can truly be alledg'd, That the Party ſummoned is *Oultre la Mer*, beyond the Sea, this is accepted as a good Eſſoin, to ſave his Default. But principally to be a certain and regulated Diſtance, within which, our Law will admit of ſome Preſumptions, which, beyond that Diſtance, it will not. For Example, If a Husband be within the four Seas, and his Wife has Iſſue, the Law preſumes the Iſſue Legitimate, and will admit of no proof to Baſtardize the Child, becauſe, within ſo little a diſtance, Man and Wife might clandeſtinely come together, and none can ſafely ſwear they did not; but if the Husband be out of the four Seas, the Law is otherwiſe. By the Statute of 18. *Edw.* 1. a Fine, levy'd in the Common Bench, concludes him, who is within the four Seas, if he puts not in his Claim within a Year and a day, becauſe the Law preſumes him near enough, to have timely notice of ſo ſolemn an Act as a Fine is; and if he ſuffers himſelf to be foreclоſed for want of an Action or Entry, imputes it to his own neglect. By the Statute of 4. *Hen.* 7. *cap.* 24. the forementioned Term of a Year and a day, is enlarged to five Years: And what in the Statute of *Edw.* 1. is ſaid to be out of the four Seas, is in this of *Hen.* 7. ſaid to be out of the Realm, as equipollent Phraſes, and ſignifying the ſame thing. And if a Man be out of the Realm, what day a Fine is levied, though it be a publick Act, the Law ſuppoſes him not to have ſufficient notice of a thing done within the Realm, and therefore interpoſes an exception to the ſaving of his Right. And this is all which our Law-Books

Cok. on *Lit.* Sect. 399.

Co. 8. Rep. *Lechford's* Caſe.

Books mean, when they ſay, The Sea of *England* is within the Realm of *England*, as in the place quoted in the Margin. But whether the Sea be ſo within the Realm of *England*, as to be part of the Territorial Property of it, excluſively of all other Kingdoms and States, that they meddle not with. But to be within the four Seas, and to be within the Realm of *England*, is, as to ſome purpoſes, in conſtruction and intendment of our Law, one and the ſame thing. *Co.* on *Litt.* Sect. 439.

Our Law-Books have many other Phraſes and Expreſſions of ſpecial uſe, but yet do not reach the controverted point betwixt *England* and other Nations. As where 'tis ſaid, The Sea is of the Ligeance of the King, and parcel of his Crown of *England*; *Le Mer eſt del Liegeance del Roy, & parcel de ſon Corone d'Engleterre.* And in another place, 'tis ſaid, The Sea of *England* is within the Ligeance of the King, as of his Crown of *England*. As to the King's Liegeance, it ſtands thus in our Law; All Natives, or Natural-born Subjects, or perſons born within the King's Ligeance (for theſe do tantamount) whereſoever they are, whether at Sea or Land, in *England* or any Foreign Country, *quocunque ſub Axe*, they ſtill owe a Native, or natural and inſeparable Faith and Allegiance to their Liege-Lord the King. Whilſt in *England*, or upon the Seas, beſides their natural Ligeance, they are within the local Ligeance of their own Sovereign, and under his immediate Protection and Defence. But when within the Dominions of a Foreign Prince, tho', as to perſons, they ſtill retain Faith to their natural Sovereign; yet, as to place, they are out of his actual Obedience, and within the protection of another, which draws Subjection along with it, and makes them the temporary local Subjects of that other Prince. And as this is the Caſe of *Engliſh* men abroad, ſo is it of Aliens here in *England*. A Child born at Sea in any of the King's Ships, or other *Engliſh* Veſſel, Navigated by *Engliſh* Maſter and Crew, is a Native; if born upon the Land of *England*, in any Fort or Town poſſeſs'd by an Enemy, 'tis born out of the King's Ligeance, and therefore an Alien. But whereas 'tis ſaid, the Sea is within the Liegeance of the Crown of *England*, this is to be underſtood extenſively of the Ligeance of the Crown of *England*, that it reaches to Sea as well as Land, not excluſively of the Ligeance of other Crowns, as *Co.* 5. Rep. Sir *Hen. Corſtabe's* Caſe, *fol.* 168. *Co.* on *Littl.* Sect. 439. *Co.* 7. Rep. *Calvin's* Caſe, *fol.* 6.

if no Crown had Ligeance at Sea, but that of *England* only; or, as if no Foreigner, aboard his own Veſſel within any the four Seas, were within the Ligeance of his own natural Sovereign, for this is manifeſtly repugnant to daily Fact and Experience, as we ſhall ſee anon, when I come to the Queſtion of Fact.

Co. in *Conſtabl.* Caſe, *ut ſupra.*

As to that other Expreſſion of the Seas, being parcel of the Crown of *England*, the forementioned Author, in the place before cited, expounds his meaning to be, That 'tis parcel of the Inheritance of the Crown of *England.* Thus *Jetſam*, *Flotſam*, and *Lagan*, appertain to the King by his Prerogative. Goods thrown over-board to lighten a Ship, in diſtreſs by Weather, are called *Jetſam*; Goods of a wreck'd Ship floating upon the Waters, are call'd *Flotſam*; Goods ſunk, with a Cork or Buoy tied to them, to direct to the place, are called *Lagan* or *Ligan*: All theſe Goods, if the Ship periſhes, and no Owner can be proved, belong to the King in right of his Crown, as treaſure *trove* and *eſtrais* at Land do, and all Derelicts, whoſe Property is loſt, the Law adjudges them to the King, as Owner paramount.

Co. Rep. 7. Caſe *de Swans*, f. 16.

Alſo Royal Fiſhes, as Whales, Sturgeons, *&c.* taken by the King's Subjects on the Seas of *England*, appertain to the King by his Prerogative, but no mention made in any of our Law-Books, of an Appropriate Fiſhing, excluſive of the People and Subjects of other Princes and States.

I have mentioned theſe Paſſages, which occur in the Books of our Municipal Laws, becauſe though of excellent uſe and undeniable verity, when fitly applied to what they are deſign'd and intended, yet if miſapplied to the Caſe of the Dominion of the 4 Seas, as it ſtands betwixt *England* and other Nations, they may and do occaſion Error and Miſtake. Thoſe Books handle Caſes betwixt Subject and Subject, and ſometimes betwixt Crown and Subject, but not betwixt Crown and Crown, I mean betwixt *England* and other Kingdoms. Matters of this Nature muſt be look'd for in the publick Treaties and Tranſactions of State betwixt our Kings and foreign Princes, or in a long peaceable Poſſeſſion, which we call Preſcription; and theſe I ſhall examine by and by.

Thus far I have endeavoured to clear the true Notion of Sea-Dominion, neither extending it to impeach the free Navigation

vigation and Commerce of peaceable Traders due to them of natural Right, and by the Law of Nations, notwithſtanding ſuch Dominion. Nor yet making it a Verbal Notion only conſiſting in words and forms of Speech, without any real Fruit and Effect, but have inſtanced in three weighty things, as the inſeparable Incidents of it. I ſhould now proceed to the Matter of Fact, but foraſmuch as ſome without Examination take it for granted, that the accuſtomed Salutation at Sea by the Flag and Topſail, is an Act of Recognition and Acknowledgment of the Sovereign Dominion of the Sea inherent in that Prince, to whom ſuch Salutation is performed, I ſhall crave leave to examine this in the firſt place.

CHAP. III.

What the Salutation at Sea by the Flag and Topſail ſignifies, and whether it has any Relation to the Dominion of it.

THE Salutation at Sea by the Flag and Topſail, was never Covenanted in any the publick Treaties, betwixt *England* and other Nations, but in thoſe with the *United Netherlands* only. And never in any of them till the year 1654. And I am inclinable to believe, that there were particular Reaſons, why it was then covenanted; partly, becauſe at that time the Royal Dignity of *England* was debaſed and diſguiſed under the obſcurer Name of a Protectorat; and they who had not refuſed it to an anciently Crowned Head, might make ſome ſcruple to do it to a new Republick. And partly, becauſe that War began upon a Diſpute for the Honour of the Flag. I cannot ſay, it was the ſole Cauſe of the War, but it was the firſt occaſion of it. For whileſt *Blake* was in *Dover* Road with the *Engliſh* Fleet, *Tromp* with double the

the number of Ships, but not equal in goodneſs, ſtood over from the Coaſt of *Calice* directly towards him, and came up cloſe with him, with his Flag aloft, Jacks and Pendants flying, and all the Bravery he could diſplay. *Blake* was too ſtout to brook the Affront, and ſo in plain Engliſh the two Generals fell together by the Ears, neither of them knowing how ſoon he might be called to a ſevere accompt by his Superiours, for what he had done. But they juſtified themſelves, by caſting the blame one upon the other, and thus the Servants Quarrel ſoon became the Maſters, and both Nations engaged in a fierce War: Which ended in 1654, and in the 13th Article of the Treaty of Peace then concluded, to prevent the like Diſputes for the future, it was Covenanted, *That the Ships of the United Provinces, as well thoſe fitted for War, as others, which ſhould meet in the Britiſh Seas any the Ships of War of* England, *ſhould ſtrike their Flag, and lower their Top-ſail, in ſuch manner, as had been any time practiſed before, under any former Government.* But whereas ſome think, that this was prejudicial to *England*, to take that by Covenant, which they held before by preſcription, I am not ſo clear in that Opinion. For what ſtood before upon the foot of Courteſy, or of Cuſtom at the beſt, was now confirmed by a ſupervening Contract, and paſſed into a National Law, founded upon mutual Conſent. And from the Treaty in 1654, it paſſed into that, made at *Weſtminſter* by His late Majeſty in 1662; and from thence, into that made at *Breda* in 1667, in which, as in the former, the Flag and Topſail are expreſly covenanted for in the *Britiſh* Seas. But by a later Treaty, *viz.* 1673. inſtead of the *Britiſh* Seas, there is an enlargement to the Seas, betwixt *Cape Finiſterre*, to the middle point of the Land *Van Staten* in *Norwey*.

May 1652.

Here 'tis to be obſerved, that in the forementioned Treaties the Salutation by the Flag and Topſail is no where ſaid to be an acknowledgment of the Soveraignty of the Crown of *England* in and over the *Britiſh* Seas, nor ſo much as intimated or implied; but on the contrary, as it were on purpoſe to prevent ſuch a Conſtruction, 'tis expreſly ſaid to be a Reſpect. The words of the Treaty 1673 are theſe: *In acknowledgment of the King of* Great Britain's *Right to have his Flag reſpected, They*, i. e. *the* Dutch *ſhall ſtrike*

ſtrike their Flag, and lower their Topſail, in the ſame manner, and with the ſame reſpect, as hath at any time, or in any place, been formerly practiſed. 'Tis true, it has been offered at, to make this Reſpect paſs into an Acknowledgment of Sovereignty, but it was but an Offer, and ſo vaniſh'd; for in the Project or Concept of 27 Articles, delivered in the year 165⅔. by the then *Engliſh* Commiſſioners to the *Dutch* Ambaſſadors, in the 15th Article it was thus propoſed: *That the* Dutch *Ships, both Men of War, and Merchants, (beſides ſtriking the Flag) ſhould ſuffer themſelves to be viſited, if required, and ſhould perform all due Offices of Honour and Acknowledgment to* England, *to whom the Dominion and Sovereignty of the Britiſh Seas of right appertain'd.* But this Article was rejected by the *Dutch*, as were ſeveral other Propoſals of a high nature; for it was then urg'd, and for ſome time inſiſted on, that there ſhould be a Coalition of *England*, and the United Provinces, into one and the ſame Republick; not an Union only, but an Adunation; not a mere Coition into a ſtricter Bond and League of Friendſhip, but a Coalition of both into one Government. But this was rejected too, as impracticable.

If the Queſtion were only concerning the Antiquity of this Ceremony, how long it has been practiſed amongſt theſe *Europæan* Nations, (for it had a time when it firſt began, and it does not obtain univerſally:) We have a Record in our Admiralty, which would be pertinent to this purpoſe. It is an Edict or Proclamation, publiſhed by King *John* at *Haſtings* in *Suſſex*, in the Second Year of his Reign, near 500 Years ſince, and is tranſcribed by Mr. *Selden* out of the Records of the Admiralty, to the following purport: *That if any Ships or Veſſels, laden or unladen, refuſed to Lower their Sails at the Command of the King's Lieutenant or Admiral, or of his Lieutenant, then to be compelled to do it by fighting them, and, if taken, their Ships and Goods to be confiſcated*; as may be ſeen more at large in the place noted in the Margin. But the Proclamation ſays not, that this lowering their Sails, was to be done, as an acknowledgment of the King's Dominion in the Weſtern Channel, to which Sea it eſpecially relates; and yet none could have better required it, than King *John*, for he was at that time in actual poſſeſſion, both of *England* and *Normandy*, and conſequently

Mar. Claus. l. 2. c. 26.

was actual Lord of both Shores, and might have reckoned the Channel as an Appendant and Acceſſion to the Land, and to have followed it as the Acceſſory does the Principal; as he is Lord of the intermediate River, who is Lord of both the Banks. But as this Proclamation expreſſes no ſuch thing, ſo neither does the penning of it ſeem to incline that way: For it mentions not Ships of War, who, as ſuch, ought the rather to be obliged to make ſuch Acknowledgment, as being moſt likely to diſpute it, but only Ships laden or unladen, *Nefs ou Veſſeaulx chargés ou voide*, referring to Merchants and Traders, be their Ships light or freighted; and theſe Merchant-men are to do it, not at the Command of every body, but, *au Commandement du Lieutenant du Roy, ou de l'Admiral du Roy, ou ſon Lieutenant*, at the Command of the King's Lieutenant, or the King's Admiral, or his Lieutenant, intimating a perſonal Reſpect due to their Rank and Quality, eſpecially from ſimple Traders.

However, 'tis certain, that this Honorary Reſpect or Civility, call it what you will, is no natural expreſſion of a Subjection to a Sovereign; for 'tis not founded in Nature, but in Inſtitution, and is a practiſe peculiar to the Weſtern Nations; and the modes of Reſpect are ſo various in different Countries, that what in one is a Civility, in another is a Rudeneſs. And as it is no natural expreſſion of Subjection, ſo neither is it a neceſſary one, as if it muſt neceſſarily ſignify that or nothing; for lowering the Flag, or Sails, is but like uncovering the Head, by vailing the Hat or Bonnet, which, amongſt us, is uſed as a Token of Subjection to our King, of Reſpect to our Superiors, of Civility to our Equals, of Courteſy to our Inferiors. Thus we ſee one and the ſame ſpecifick Act of uncovering the Head, as it relates to perſons of different Orders and Degrees, admits of divers Significations. Some of our Sea-Captains, tho' irregularly enough, and for want of explicite Orders, have required of the *Dutch* the Honour of the Flag and Topſail in the *Mediterranean* and *Baltick*, where the Crown of *England* never pretended Sovereignty. And as in the forementioned Treatiſe of

'Tis ſo called in the Journal of King *Edw.* 6. wrote with his own hand, the words are theſe:

The *Flemings* Men of War would have paſſed our Ships without vailing Bonnet, which they ſeeing, ſhot at them, and drove them at length to vail Bonnet. See pag. 11. of K. *Edw.* Journal, in the 2d Part of Dr. *Burnet*'s Hiſt. of Reform.

of 1673, 'tis particularly named a Reſpect, ſo 'tis covenanted to be done, not only within the *Britiſh* Seas, but every where betwixt the Capes, *Finiſter* in *Spain*, and *Staten* in *Norway*, beyond the Limits of the Sea-Sovereignty of *England*, and conſequently has no relation to it. Beſides, this Honour to the King's Flag is required from his own Subjects, but 'tis needleſs to require from them an acknowledgment of Sovereignty, to whoſe benefit it redounds, the import is, that Foreigners would acknowledge it, to whoſe Profit 'tis oppoſed.

Well then, if this Ceremony does not relate to an acknowledgment of a Sovereignty in the Sea, what is it that it relates to? And what is the true import and ſignification of it? I anſwer, it imports theſe two things: 1. 'Tis *Cultus Superioris*, 'tis a Reverence or Reſpect performed to a perſon of Superior Quality and Degree. 2. 'Tis *Symbolum Pacis & Amicitiæ*, 'tis a ſign, or ſymbolical expreſſion, of Peace and Friendſhip. Sometimes it ſignifies both theſe together, and ſometimes but one of them, according to the different degrees of the perſons performing it; but it always ſignifies one or them, and never any thing more. The *Dutch*, and other ſmaller Republicks, perform it, both as a Reſpect to the Crowned Head of *England*, and as a Salutation of Peace and Friendſhip alſo. But Crowned Heads cannot perform it as to one of a Superior Order, becauſe they are in a parity and equality of Degree; but they do it upon the later accompt only, as 'tis an expreſſion of Peace and Amity. The *Dutch* and others do not, by the Flag and Topſail, recognize the King of *England*, as Sovereign of the four Seas, nor acknowledge themſelves thereby his local Subjects, and their Perſons, Ships and Goods, to be under his immediate Juriſdiction and Protection, whilſt in and upon thoſe Seas; but they acknowledge him as Præeminent in Order and Quality, not as Sovereign over them, but as Superior to them in Dignity and Degree. Were I to expreſs it in *Latin*, I would do it by that old *Roman* Phraſe of *Comiter Colere*, or *Obſervare Majeſtatem*, They pay Honour or Reſpect to the Majeſty of a Crowned Iſland. And as to the Crowned Heads, tho' they cannot, as I ſaid before, pay Reſpect to a Superior, becauſe of the parity of their Degree; yet, as to the Sea-Salutation

by the Flag and Topſail, there is a peculiarity on the part of *England*, even in reference to them. A Foreign King, when Ships of War of another Nation approach his Havens, and come within reach of his Caſtles, will expect, and juſtly may, that the Comer ſhould ſalute him firſt; the Gueſt or Stranger gives the firſt Salute to the Maſter of the Houſe, who thereupon Re-ſalutes him, and bids him welcom. And what does this Salutation ſignify, be it by lowering Flag and Topſail, or by firing Guns, but that they are come Arm'd before his Doors only as Friends, and without intention of doing him hurt? But the peculiarity on the part of *England*, conſiſts in this; *England* is an Iſland, whoſe Frontier is the Sea, whoſe Forts and Caſtles are the Ships of the Royal Navy, which bear Analogy and Proportion to the Frontier Towns, and Fortified Places of Inland Dominions; and therefore, when met within the Seas of *England* by the Ships of War belonging to any other Crowned Head, theſe later ought not to approach the Ships of War of *England*, who are in their Stations upon their Guard and Duty, with a Flag aloft in a poſture of Challenge and Defiance; but do, in their Courſe and Paſſage, call to the Guard-ſhips of *England*, to tell them, *They are Friends*; and what they cannot do by Words at that diſtance, they do by mute Signs, by ſtriking their Flag or Topſail, which in effect expreſs thoſe words. And when they ſalute thoſe Guarders, by diſcharging their Guns, it is in effect to tell them, they were not charged againſt them; and tho' they Steer their Courſe along the Coaſts of an open Iſland, yet they deſign no Hoſtility. This is no diminution to the Majeſty of any Monarch, how great ſoever, and were the Salutation thus ſtated with Crowned Heads, it would be leſs controverted, and the Crown of *England* loſe nothing by it neither.

But if the *Dutch* perform this Ceremony, as a Reſpect to a Crowned Head, without relation to a Sea Sovereignty, why not to *France* as well as *England*? ſince they are equally Crown'd Heads, and one has one Bank of the Channel, and the other has the other: And what ſhall then become of the peculiar Prerogative of the Crown of *England*? This peculiarity on the part of *England*, as an Iſland whoſe principal defence is at Sea, I have touch'd already. But as to the *Dutch* per-

performing equal Reſpect at Sea to the Crown of *France*, as to that of *England*, I do not doubt, but they will do it, when required thereto. And what Remedy is there againſt it, unleſs by Contract? for though I may not be covered when I will, yet I may put off my Hat and be uncovered when and to whom I pleaſe. The *Dutch* ſteer their Courſe by the Pole Star of Trade, not by the Punctilio's of Honour. And were this Conſtruction put upon their ſtriking their Flag to the Flag of *England*, that it is a Recognition of a Sea-Sovereignty: They would do the ſame to *France* the rather, and not as a thing impoſed but upon choice, thereby to diſpropriate and lay common, what *England* would incloſe as her Property. Nor would it be a new thing for *France* to ſet up for the Honour of the Flag and Topſail, for it was expreſly ſtipulated in the 12th Article of the League Offenſive and Defenſive, made in the year 1635, betwixt *Lewis* the 13th, and the *States General*, that upon occaſion of any Conjunction of the *French* and *Dutch* Fleets, *The* Dutch *Admiral ſhould firſt Salute the* French *with Flag and Topſail, and fire his Guns, in ſuch manner as had been practiſed towards the King of* Great Britain *upon the like Occaſion.* And *Henry* the Second, and *Henry* the Third of *France*, did both of them Publiſh their Royal Edicts, one in the year 1555, the other in 1580, Commanding all Foreign Ships indefinitely (I ſuppoſe Traders) to lower their Topſails to the Ships of War of *France*, upon pain of ſeizure and confiſcation; and ſome *Hamburgers* were forcibly taken, for not conforming to thoſe Edicts. But may not the preſent *French* King ſay, what *Cæſar* once did, *Sylla fecit, non ipſe faciam?* did the two *Henrys* do this in the faint times of their languiſhing Reigns, and ſhall not I do it? who can cover with Fleets of War the three Seas, which cover the Coaſts of *France*. I have read ſomewhere in the *French* Memoires, I think in thoſe of the Duke *de Sully*, that the whole Naval Strength of the Crown of *France* in the beginning of *Henry* the Fourth, was about half a Dozen Ships of War, ſuch as they were at *Breſt* and *Rochel*, and about a Score of Gallies in the *Mediterranean*. But this laſt named great King, dreſſed a new Plan of the *French* Monarchy, and drew out the Lines of it larger than before; And though his great deſign was interrupted by an immatu-

Leo ab Aitz. Hiſt. p. 177.

Ludov. Servin. Placit. II. Tom. 2.

immature Death, and by the ſucceeding Minority of his Son, yet the great Cardinal, I mean *Richlieu*, reſumed it again. He firſt taught *France*, that the *French Flower-de-luces* could grow at Sea, as well as Land. He deck'd and adorn'd the lofty Sterns of his new-built Ships with this Prophetick Inſcription——*Florent quoque Lilia Ponto.*

Having done with the Sea Salutation, I come to the Fourth general Head, under which,

CHAP. IV.

The whole Matter of Fact between the Crown of England, *and Foreign Princes and States in the ſeveral Incidents of Sea-Dominion is diſtinctly Examined and impartially Reported.*

I Am now upon a Queſtion of Fact only, how far this Dominion and Sovereignty in the Seas has been acknowledged, as a Right inherent in the Crown of *England*, by any of the Neighbouring Nations; either expreſly in publick Treaties and Tranſactions of State, or impliedly, by an immemorial peaceable and uninterrupted Poſſeſſion, commonly called Preſcription. This I call the Queſtion of Fact, and diſtinguiſh it from that of Right, to which 'tis Subſequent. For a Right to any thing in one, is antecedent to the acknowledgment of it by another, and though his non-acknowledgment may render it Controverted, yet it may be a juſt Right and legal Claim notwithſtanding. The Right of the Crown of *England* to the Dominion of the Seas I meddle not with, it ſtands as it did unmoveable, like *Terminus* in the Capitol with a *Cedo Nulli*, it gives place to none. But the enquiry is, whether in Fact it has been conſented to by Foreign Nations; by which Teſt, we ſhall be able to diſcover, whether the Crown of *England* has loſt any thing in matter of Sea-Sovereignty, which it formerly poſſeſs'd. In order to which, I ſhall diſtinctly handle and examine the three great and inſeparable incidents of the Sovereignty, which I before named. 1. The

1. The Excluſion of Foreign Men of War from Paſſing upon any the Seas of *England*, without ſpecial Licenſe for that purpoſe firſt obtain'd.

2. The ſole Marine Juriſdiction within thoſe Seas.

3. The appropriate Fiſhery.

I begin with the firſt, and the Enquiry is, Whether any Sovereign Prince or State having occaſion to enter upon any the Seas of *England*, with Men of War, either in entire Fleets, or as Convoys to Merchants, have firſt asked leave ſo to do of the King of *England*, as the Supreme Lord of the Territory. Of the Paſſage of Foreign Ships Equipp'd for War over the Seas of *England*.

I have often met with a Traditional Story, both in Diſcourſe and in Printed Pamphlets, that Queen *Elizabeth* having intelligence that *Henry* the 4th of *France* had a deſign to encreaſe the Naval Strength of his Kingdom, and to Equip a conſiderable Fleet of War, not only for the *Mediterranean*, but for the Seas alſo toward *England*, She ſent to bid him deſiſt from it. That the Queen might requeſt him not to put out upon theſe Seas with an unuſual Fleet, as that which might occaſion Jealouſie in her Subjects, and oblige her to an extraordinary Expence in Arming proportionably, and conſequently tend to weaken the Amity and good Aſſurance betwixt the two Crowns; I ſay, that ſhe might do this, for I do not find that ſhe did it, is neither morally impoſſible, nor wholly diſagreeable to the practice amongſt Princes. But that ſhe did *pro Jure* interdict and forbid him ſo doing, as an Intrenchment and Invaſion of her Right, by entring with an Armed Force upon the Territories of her Crown, without her leave; for this I ſhall ſuſpend my belief till better Vouchers be produced. 'Tis too common amongſt Men, firſt, to form their Opinions, and then to ſeek their Proofs, and ſome rather than not find them will deviſe them.

There is another currant Story of the ſame alloy, That Queen *Elizabeth* ſeized in the Bay of *Caſcais* in *Portugal*, Sixty Laden Ships belonging to the *Hans Towns* of *Germany*, and afterwards confiſcated both Ships and Goods; *For having preſumptuouſly paſs'd over her Seas, without firſt obtaining her Royal Permiſſion.* In this, ſeveral Miſtakes are complicated together, one in Law and two in Fact. That in Law is this, ſuppoſing

ſuppoſing the Dominion of the Seas to have been univerſally acknowledged as the Queens undoubted Right, yet ought not the *Hanſeatics*, who were Friends, and peaceable Traders, and purſuing their lawful Occaſions, to have been confiſcated, for not asking leave of Paſſage over theſe Seas, had there been nothing more in the caſe, becauſe they needed not in Law ſo to have done. No more than a Market-man needs ask leave of the Owner to paſs his Field, over which the Market Path lies. The two Miſtakes in Fact are theſe.

Cambd. ad An. 1589. *Thuan. Hiſtor.* lib. 95.

1. The ſaid Sixty Sail of Ships did not in Fact paſs the Seas of *England*, and therefore could not be confiſcated upon that accompt. Mr. *Cambden*, our faithful Annaliſt, ſays expreſly, and ſo does *Thuanus* too, That they paſs'd on the North of *Scotland*, by the *Orcades*, *Hebrides*, and great Weſtern Ocean on the backſide of *Ireland*, a long and dangerous Paſſage, to avoid being intercepted in the Channel by the Queens Ships.

2. The ſole Reaſon why they were confiſcated was this, becauſe they carried Goods of *Contrabanda*, Prohibited Goods, *viz.* Corn, which at that time *Spain* wanted, and Naval Proviſions to the relief of an Enemy, who at that time was preparing a new Fleet for the Invaſion of *England*, in revenge of the Diſgrace he had received the year before, *viz.* in 88. And this they did, contrary to the Queens Proclamation and Monitory Letters to the *Hans Towns*, whereby ſhe forbad them to ſupply *Spain*, her declared Enemy, with ſuch Proviſions, under the Penalty of forfeiting Ships and Goods. Thus the *Dutch* in the year 1652. when by their Intereſt and Influence in the Court of *Denmark*, they had caus'd an *Engliſh* Fleet of above Twenty Merchant men, Laden with Pitch, Tar, Flax, Hemp, and other Naval Stores, to be Arreſted in the *Sound*, ſuppoſing that *England*, with whom they were then in War, would be Diſtreſſed for want of ſuch Proviſions, They Publiſhed a Placart forbidding all in general to Import into *England* any the aforeſaid Materials, upon pain of confiſcation thereof, as being a Relief to an Enemy, in things they particularly wanted for proſecuting the War againſt them. I enquire not here, *Quo jure*, by what Right, the *Dutch* did this, and whether it was not a Violation of the free Commerce of Neutral Nations.

Nations. But I only inſtance in the Fact, as parallel with what the Queen did: Nay, the States did far more than what the Queen did, comes to; for they, in the Year 1599, almoſt in the Infancy of their Republick, publiſh'd a Placart, forbidding all Nations any Commerce with *Spain*, not in this or that prohibited Commodity, but in all Goods and Merchandizes whatſoever. *Vetant populos quoſcunque ullos commeatus reſve alias in Hiſpaniam ferre.* They are the very words of *Grotius*, in his *Belgick Annals*, the eighth Book, this by the way only.

Grot. Hiſt. de Rebus Belg. lib. 8. pag. 372. Edit. Amſtel.

If we conſult the publick Treaties, which have been betwixt *England* and other Sovereigns, concerning Ships of War paſſing theſe Seas, we ſhall find the manner to have been, as followeth. The uſual Covenants are, and have been, That the Ships of War, of either ſide, may freely come into the Roads, Havens, and Rivers, each of other, provided they be not in ſuch number as may occaſion ſuſpicion; and therefore the number is aſcertain'd, and not to be exceeded, unleſs to avoid imminent Danger, and in ſuch caſe, notice to be given thereof. For Example: In the Treaty concluded at *Madrid*, in the Year 1630, betwixt *Charles* the Firſt of *England*, and *Philip* the Fourth of *Spain*, which Treaty was but a renewal of the former made with King *James*, in the Year 1604, it is in the 8th Article agreed, *That it ſhall be lawful to have acceſs unto each others Ports with Ships of War, whether they ſhall arrive there, either by force of Tempeſt, or for neceſſary Repairs, or for proviſion of Victuals; ſo they exceed not eight, when they come of their own accord, nor ſtay longer than they ſhall have cauſe. And when any greater Number ſhall have occaſion of Acceſs, they not to enter the Port, without the privity or conſent of the King.* This is the form of all the Treaties; and Articles, like to this, have been agreed betwixt *England* and *France*, and *England* and *Holland*, but they are always reciprocal; and as their Ships of War are reſtrained from acceſs to the *Engliſh* Ports, ſo are the *Engliſh* from acceſs to theirs in equal manner. And 'tis to be noted, that the Reſtraint is only from acceſs to each others Ports, but never any Reſtraint of Foreign Ships of War from entering, in what Number they pleaſe, the Seas of *England*. Thus in the Year 1639, which was but nine Years after the

Treaty aforementioned at *Madrid*, a *Spaniſh* Fleet, of above ſixty Sail, equipped for War, entred the Weſtern Channel, without leave firſt asked, bound for *Oſtend*, to ſupply the *Spaniſh* Netherlands with Men, Munition, and other Neceſſaries, and paſs'd the Channel to the height of *Dover*. And the *Dutch* Fleet put out in like manner upon the North-Eaſt Sea, and fought the *Spaniſh* Fleet in the *Downs*. 'Tis true, that Sir *John Pennington*, who then commanded the *Engliſh* Guard, endeavoured to hinder them from fighting ſo near the Ports, to the diſturbance of the Security and Protection of them, and troubling the Commerce and Entercourſe of the King's Lieges and Allies. But no Complaint made, either then or afterwards, of the two Fleets of War entering the Seas aforeſaid, parcel of the Dominion and Territory of the Crown of *England*, without a ſpecial Licenſe firſt ask'd and obtain'd. And it would be Time miſpent, to recount how often, either *Spaniards*, *French*, or *Dutch*, have entred theſe Seas with armed Fleets and Convoys, as their Occaſions obliged them, freely, without leave, and without controul. I ſpeak not here of the private Notices and Intimations, which one Prince may in friendly manner give another, to ſatisfy him of the reaſon of any extraordinary Military Preparations, and of the clearneſs of his Intentions towards him. But of a formal previous Leave to be ask'd and obtain'd by a Foreign Prince or State, before they put out to Sea, upon the Maritime Territory of the Crown of *England*, in a Warlike Equipage.

In the year 1652, The *States General* gave publick Notice by their Ambaſſadors here in *England*, that they had Reſolved to fit out to Sea an extraordinary Fleet of One hundred and fifty Men of War, beſides thoſe in preſent Service, for the Security and Preſervation of their Navigation and Commerce. They did not ask leave to do it, but firſt reſolv'd upon it, and then gave Notice, and they pretended this Notice was an Argument of their Sincerity and good Will, in order to prevent all miſunderſtandings, and ſiniſter interpretations. But they in *England* underſtood it otherwiſe, and reſented it as a Bravado and Inſult.

I Paſs now to the ſecond Incident of the Sovereignty, to Examine the Matter of Fact as to that, *viz.* The Marine Juriſdiction.

Of the Marine Juriſdiction, and the Laws of *Oleron*. *Videſis Us & Conſtumes de la Mer*, printed at *Bourdeaux* 1661.

'Tis commonly affirm'd by *Engliſh* Writers, that our King *Richard* the Firſt (the *French* give a different accompt) did, in his return from the Holy Land, make and declare certain Marine Laws, for the better Regulation of Commerce, which from the place of their firſt Publication were call'd the Laws of *Oleron*. A ſmall Iſland ſcituate in the Bay of *Aquitain*, and a Member of that great and wealthy Dutchy, which was in the actual Poſſeſſion of King *Richard*, as his maternal Inheritance, for it came to his Father *Henry* the Second, by Marriage with *Elianor* Daughter and Heir of *William* Duke of *Aquitain*. And by the way it may be noted, that this Dutchy, either in whole or part, continued in the Poſſeſſion of the Kings of *England* by ten Deſcents, to the 32d of *Henry* the Sixth, near 300 years, though that of *Normandy* continued but five Deſcents, and ended in King *John*. But whether theſe Laws were Publiſhed as aforeſaid by King *Richard*, or whether about Sixty years after, as ſome Printed Editions would have them, is not an Enquiry pertinent to this place. Be it admitted, thoſe Laws were Publiſhed by King *Richard*, who was actual Duke both of *Aquitain* and *Normandy*, and in right of the latter Lord on both ſides the *Engliſh* Channel. The great entercourſe betwixt his *Engliſh* and *French* Subjects, and thoſe of his Allies, required a certain Rule of Sea-Laws for the more ſpeedy and impartial Determination of all Controverſies, which might occaſionally ariſe. Theſe Laws of *Oleron*, as to the main of them, are but a tranſcript of the old *Rhodian* Laws, with ſome new Additions and Amendments, accommodated to the practice of that Age, and the Cuſtoms of the Weſtern Nations; who thereupon might readily conform to them, as to a common Standard and Meaſure, like a Law of Nations, for the more equal diſtribution of Juſtice amongſt the People of different Governments. But to infer from hence an Univerſal Monarchy at Sea, and that King *Richard*, in right of his Imperial Crown of *England*, and Ducal

Crowns of *Normandy* and *Aquitain*, did, as ſole or Supreme Legiſlator for the Marine, authoritatively impoſe Sea-Laws upon the People and Subjects of other Nations, is but a ſtrained inference. The *Romans* were far enough from yielding a Sea-Sovereignty to the little Republick of *Rhodes*, and yet were ſo well ſatisfied with the Equity of their Sea-Laws, that they not only conform'd to them, but incorporated them into the Body of their Digeſt. And as the *Rhodian* Laws obtain'd in the *Mediterranean*, and the Laws of *Oleron* in the Weſtern and *Engliſh* Seas: So the Laws of *Wisbuy* (a Town ſituate upon the little Iſle of *Gotland*, in the Eaſtern part of the *Baltick*, formerly under *Denmark*, now under the Crown of *Sueden*) call'd from thence *Leges Wisbuicenſes*, were received by the general conſent of the Northern Traders, as a common meaſure for all Nautick Affairs, to the Northwards of the *Rhine*, and throughout the whole *Baltick*.

Lib. 11. *Digeſt.*

Peck. in Comment. ad Tit. Dig. & Cod. de Re nautica. p. 190.

That the Sea is within the Juriſdiction of the King of *England*, is a matter unqueſtionable, not at home only, but amongſt all Nations. His Admiral has, and ever had, through a long ſeries of Ages, the Conuſance of all Contracts, Pleas, and Querrels made upon the Sea, out of the Body of any County of *England*. Which Power is inlarged by the Statute of 15 *R.* 2. *cap.* 3. to Death, and Mayhem upon great Ships in the main Stream of great Rivers. And by the Statute of 28. *Hen.* 8. *cap.* 15. a Court of Commiſſion may be held under the great Seal *Coram Admirallo*, &c. to hear and determine all Treaſons, Felonies, Robberies, *&c.* done or committed upon the Sea. But then 'tis evident and undeniable alſo, that the Neighbouring Kingdoms and States, who border upon the Sea, have their diſtinct Admiralties likewiſe, and have long ſince had, where their Subjects and People receive final Sentence in all Maritime Cauſes, without exception of any Seas, or without Appeal to the Admiralty of *England*, as the laſt reſort, or as having Supream Conuſance of all things done and committed in and upon the *Britiſh* Seas. If a *French* or *Dutch* Veſſel take a Pirat of what Nation ſoever, who has committed a Robbery upon the *Engliſh* Seas, they do not remit him to the Admiralty

miralty of *England*, as to the ſole Tribunal of the place, where the Fact was done, to receive Sentence there; but they carry him before their own Judicatories, and judge him as an Enemy of Mankind by the Law of Nations. If one Foreigner does any Injury to another, be it Fraud or Violence, upon the *Britiſh* Seas, the Party injured makes not his Complaint to the Admiralty of *England*, as the proper Court, and as having the ſole Juridical Conuſance of his Plea, but reſorts to the Juriſdiction of his own Sovereign, or to that of the Sovereign of the Wrong-doer, and there Impleads him, and prays for Juſtice. If a *Frenchman* kill a *Frenchman*, one Alien another, upon the Land of *England*, the Fact is committed within the local Ligeance of the King of *England*, and againſt the Peace and Protection of his Crown, and therefore triable before his Courts; But if two *Engliſhmen* be under the Pay and Service of the *French* King, and one of them Kill the other, aboard a *French* Man of War, within the 4 Seas; The *French* King's Judicature will have the Conuſance of the Crime, as done within his Ligeance, and againſt the Peace and Protection of his Crown.

Thus ſtands the matter of Fact, as to the Marine Juriſdiction, and thus it has been for many Ages; but yet there is an ancient Preſident, which ſeems to impugn ſomething that has been ſaid, and not to take notice of it, were to report things unfaithfully; and therefore I crave leave to examine it. 'Tis a Bundle or Roll in the *Tower* of *London*, Superſcribed *De Superioritate Maris* Angliæ *& Jure Officii Admiralitatis in eodem*; Record, I can ſcarce call it, for 'tis not any Judicial Act or Monument of a Court of Record; and it may be read, as 'tis tranſcribed at large by Lord Chief Juſtice *Cake*, and by Mr. *Selden*, who highly inſiſts upon it.

Co. Inſtit. 4. part. Cap. 22. the Admiralty. Seld. Mar. Claus. l. 2. cap. 27.

I ſhall abbreviate it truly, and in ſhort the Caſe was this,

A League had been concluded betwixt *Edward* the Firſt of *England*, and *Philip the Fair* of *France*, in which it was Covenanted, that each ſhould defend the others Rights, and Neither relieve the other's Enemy. After this, a War enſued betwixt *Philip*

Of the Roll in the Tower. De ſuperioritate Maris, &c.

Philip and the Earl of *Flanders*, whom *Edward* ſecretly favoured. Whereupon *Reyner Grimbald*, who was General at Sea for the King of *France*, took ſeveral Ships both of *England*, and of other Nations Trading to *Flanders*, and confiſcated Ships and Goods, and impriſon'd Perſons, as carrying Relief to an Enemy. Upon which and other Complaints, Commiſſioners were appointed by both Kings, call'd in the Roll, writ in *Norman* French, *Auditours Deputez per les Roys d'Engleterre & de France a redreſſer les dammages faits.* The Plaintiffs who were of ſeveral Nations appear by their Procurators or Attorneys before the ſaid Commiſſioners, and joyn all together in one Bill or Libel, as being all involv'd in one Common Cauſe. In the Rehearſal of the ſaid Libel, 'tis alledg'd, that, *Whereas the Kings of* England, *by reaſon of the ſaid Kingdom, from time to time, whereof there is no Memory to the contrary, have been in peaceable Poſſeſſion of the Sovereign Dominion of the Sea of* England, *and of the Iſles of the ſame, by Ordaining of Laws*, &c. *And whereas 'tis Covenanted in the League lately made betwixt the two Kings, that each ſhould Defend the others Rights, Franchiſes, and Liberties*, &c. *Monſieur* Reyner Grimbald, *Commander of the Fleet of the King of* France, *who Names himſelf Admiral of the ſaid Sea, being Commiſſioned by that King to ſerve him in his War againſt* Flanders, *hath contrary to the ſaid League wrongfully aſſumed the Office of the Admiralty in the ſaid Sea of* England, *upon Pretence of the ſaid Commiſſion, taking the People and Merchants*, &c *They pray, that the Perſons, Ships and Goods ſo taken, may be delivered to the Admiral of the King of* England, *to whom the Conuſance of the whole Matter of Right appertain'd.*

He who ſhall read more at large, in the places before quoted, the magnificent Attributes given to the Kings of *England*, of their being peaceably poſſeſs'd time immemorial of the Sovereign Dominion of the Sea of *England*, by ordaining Laws and Statutes, Prohibiting Arms and Armed Veſſels, taking Sureties, and giving Safeguards, and ordaining all other things neceſſary to the Preſervation of Peace and Right amongſt all People paſſing upon that Sea, *&c.* will at firſt view be ready to cry out—*fuimus Troes! fuit Ilium!* We were *Engliſh men!*

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England was! and yet perhaps no need of ſuch Exclamation. At firſt reading, it ſeem'd to me, at ſome diſtance, like a Stone Wall athwart my way, and no poſſibility of paſſing farther, but when I examined it more nearly, I found it but a Silken Curtain of ſpecious words drawn artificially before the Eye, and eaſie to be put back by the hand.

1. Firſt, it is to be noted, that all this is but a *Plaidoyé*, a Plea or Action, a Supplicatory Libel, or Bill of Complaint. No definitive Sentence or Arreſt, nothing that did paſs in *rem Judicatam*. This alone, were there nothing more, is ſufficient to abate the intrinſick Value of it. The Roll makes no mention of any deciſion given by the Delegates upon any the Matters contain'd in the Libel, and either none was given, which ſeems moſt probable, and thoſe Controverſies decided ſome other way, or the Roll is left imperfect.

2. Though the Intereſſents of ſeveral Nations, as *Danes*, *Germans*, *Hollanders*, &c. ſuffered Dammages by the Seiſures of *Grimbald*, in like manner as the *Engliſh* did, and therefore joyn'd with them in the ſame Libel, yet the Libel was penn'd by *Engliſh* Council, as is manifeſt by the Addreſs or Direction of it, *Avons Seigneurs Auditeurs Deputez*, To you Lords Auditors deputed, *Par les Roys d'Engleterre & de France*, by the Kings of *England* and *France*, where *England* has the preference of Order to *France*, contrary to the ſtyle of Neutral Nations of that Age.

3. The Allegation of the Kings of *England*, having been time immemorial in the peaceable Poſſeſſion of the Sovereignty of the Sea, was not made by the *French* Delegates in the Name of the King their Maſter, but by *Engliſh* Advocats in favour of their Clients Cauſe. The *French* King had Commiſſion'd *Grimbald* to exerciſe Juriſdiction at Sea, by Arreſting and Confiſcating Ships and Goods, and Impriſoning Perſons, for carrying Relief to the Earl of *Flanders* his Enemy, by which Commiſſion *Grimbald* juſtified himſelf for doing ſuch Acts, as were manifeſtly repugnant to the peaceable Poſſeſſion of the ſaid Sovereign Dominion on the part of *England*. If the King of *France* had acknowledged the Admiral of *England*, the only competent Judge of things done and commit-

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ted upon the Sea of *England*, why did he, together with the King of *England*, depute Auditors or Delegates for determining thoſe Matters then in Controverſie?

4. The Art in penning the ſaid Libel, is remarkable, it affirms the Marine Juriſdiction of the Admiral of *England*, but it does not except againſt a Power in the King of *France*, to conſtitute an Admiral with the like Juriſdiction, and that upon the Sea towards *Flanders*. For 'tis certain, that the Crown of *France* had Admirals, before the time of *Philip* the Fair. 'Tis true, that great Body of the Kingdom of *France* had been cantoniz'd and divided, after the manner of the *German* Nations, into many *Franca Feuda*, as they cali'd them, Free Fees, which are ſupreme and independent Sovereignties, only the perſons of thoſe Sovereigns under a Perſonal Obligation of Fealty to another. The reſpective feudatary Princes were fiduciary Homagers to the Kings of *France*, but the Crown of *France* had no Regal Juriſdiction or Authority within thoſe Principalities. Thus the great Dukedoms of *Aquitain* and *Normandy* were under the Kings of *England*, that of *Britany* was under a Duke of its own, the Earldoms of *Provence*, *Toloſe*, and *Flanders*, acknowledged their own Sovereign Counts. In thoſe days, the Crown of *France* had only a ſmall Sea-Coaſt upon *Picardy*, and ſome in the *Mediterranean*: But, in the time of *Philip* the Fair, that Crown was in the actual poſſeſſion of all *Normandy*; and as the other Principalities became reincorporated into the Body of *France*, from whence they had formerly been diſmembred, as now they all are, excepting ſome part of *Flanders*; that Kingdom, as it enlarg'd it ſelf to the Sea, by the acceſſion of many new Coaſts, ſo the Marine Juriſdiction thereof encreas'd proportionably. I ſay, the forerecited Libel does not deny a Civil Power or Capacity in the Crown of *France* to create an Admiral, and to inveſt him with Marine Juriſdiction: But the Exception is partly againſt the Perſon of *Grimbald*, and partly againſt his illegal Practiſes and Seiſures, contrary to the Alliance made betwixt the two Kings. Now this *Grimbald* was a Foreigner, and a Mercenary; he was a *Genoeſe*, whom the King of *France* had hired, with ſeveral Gallies of that *Republick*, to ſerve him in his War againſt

Forſat. de Gal. Imp. l. 2.

againſt *Flanders*. The Plaintiffs, in their Libel, call him, *Maiſtre de la Navy du Roy de France*, Maſter or Commander of the *French* Fleet, but would not vouchſafe him the Title of an Admiral, only *Que ſe dit eſtre Admiral*, that he call'd himſelf an Admiral, and craftily reclaim the Conuſance of their Cauſe from him, as an incompetent Judge, to the Admiral of *England*, as an undoubted Authority, and before whom they were ſure to gain their Proceſs.

I Have done with the Marine Juriſdiction, and proceed now to the third and laſt Incident of the Dominion of the Sea, and which inſeparably follows it, and that's the ſole Fiſhing; without which, it would be a Property without Profit, a Name without a Thing. He, who has the Soil, or Ground, has the Herbage, and other Growth of it, or elſe a Rent for it; if others may freely depaſture with him, it is a Common. The Enquiry is upon the Matter of Fact, as to Fiſhing upon the Seas about *England*, in which, our publick Treaties, made betwixt our Kings and other Sovereigns, will be our beſt Direction. And they ſtand thus: All the ancient Treaties, I could meet with, concluded betwixt the ſeveral Kings of *England*, and their old Confederates the Dukes of *Britanny* and *Burgundy*, which in thoſe Ages were the moſt powerful Neighbours they had at Sea, are of the ſame tenour, and run in the ſame form; *viz.* They Covenant on both ſides, that their reſpective Subjects ſhould freely, and without the let or hinderance one of another, fiſh every where upon the Seas, without asking any Licenſes, Paſports, or ſafe Conducts. This is the General Form of them all. For Example: In the Treaty betwixt *Edward* the 4th of *England*, and *Francis* Duke of *Britanny*, the Article in the *French* of that time runs thus. That the Fiſhermen, both of the Kingdom of *England*, and Dutchy of *Britanny*, *Purront peaceablement aller par tout ſur Mer pour peſcher & gaigner leur vivre, ſans impeachement, ou diſturber de l'une partie ou de l'autre, & ſans leur ſoit beſoigne ſur ceo requirir ſauf* Con-

Of the Fiſhery.

Conduct. And the ſame form had been uſed before, in the Treaty betwixt *Henry* the 6th, and the then Dutcheſs of *Burgundy*. Thus alſo in the famous Treaty, called *Intercurſus magnus*, made in the Year 1495, betwixt *Henry* the 7th of *England*, and *Philip* the 4th Archduke of *Auſtria*, and Duke of *Burgundy*, in the 14th Article 'tis agreed, *Quod Piſcatores utriuſque partis poterint ubique ire, Navigare per Mare, ſecure piſcari, abſque impedimento licentia ſeu ſalvo conductu.* And this form is alſo kept to, in the Treaty made betwixt *Henry* the Eighth, and *Charles* the Fifth, Emperour and Duke of *Burgundy*. In the time of Queen *Elizabeth*, after that ſeven of the ſeventeen Provinces had ſet up diſtinct Sovereignties of their own, they ſtill enjoyed the ſame freedom of Fiſhing, as they had done before, when united with the Houſe of *Burgundy*. And in the Treaty made betwixt King *James* of *England*, and *Philip* of *Spain*, in the Year 1604, the ancient Treaties of Entercourſe and Commerce, betwixt the Kingdoms of *England*, *Scotland*, and *Ireland*, and the Dominions of the Dukes of *Burgundy*, and Princes of the *Low-Countries*, are reviv'd and reconfirm'd. From whence it appears, upon the whole Matter of Fact, That the Kings of *England*, in their Treaties with other Sovereigns, not once or twice, but in a Succeſſion of Ages, not by ſurprize, but deliberately, and when the buſineſs of the Fiſhery came under ſpecial conſultation, did not challenge to themſelves the ſole Right thereof, excluſively of all others, as being appropriated to the Crown of *England:* For had they eſteemed the Fiſhery the Property of their Crown, and all Aliens excluded from it, they would not have admitted the Subjects of *Britanny* and *Burgundy*, to a promiſcuous Fiſhing with their own Subjects, without ſome valuable Conſideration had been given for it, or at leaſt ſome Licenſe obtained, as a beneficiary Grant derived from them, or ſome Acknowledgment made by way of a *Salvo Jure*, a Saving, to the Right of the Crown of *England*. Elſe it would be as unreaſonable, as if a Man ſhould throw down the Incloſures of his own Ground, and lay that common, which before was his Property, which is too groſs a Reflection upon the Wiſdom of thoſe Ages. And this

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may be further illuſtrated, by a familiar Inſtance. Suppoſe here in *England* two great Mannors, and betwixt them a large Lake of freſh Waters, well ſtored with Fiſh, and it can be proved, That not only Time out of Mind, the Tenants of the two Mannors have promiſcuouſly fiſhed therein, but that alſo the Lords of both Mannors have, in ſeveral Ages, contracted each with other, for a free Fiſhing, without Leave or Licenſe to be firſt ask'd or obtain'd for their reſpective Tenants. And, in the Contract, no Exception or Reſervation is made of the Fiſhery, as parcel of the Inheritance of one of the ſaid Mannors, nor any Words creating a Tenure, whereby one ſhould hold of the other; nor expreſſing or implying, that it was but a Temporary Sufferance, that one of the Lords ſhould ſhare for a time in the Profits of the Fiſhing, without any ſhare in the Fee or Inheritance of it: And this by the free Donation of the other, commonly call'd *De Gratia Speciali*, or for a valuable Conſideration, uſually termed, *Quid pro quo*, or to hold by ſome ſmall Acknowledgment of Tenure, as of a Pepper-Corn Yearly. But the Contract ſtands on both ſides upon an equal foot, both Lords equally giving and taking an undiſturb'd Liberty for their reſpective Tenants. This, I humbly conceive, is good Evidence, that the Fiſhery lies common to both Mannors. Suppoſe again, this Lake to be the Sea, and the two Mannors to be two Kingdoms; and the Caſe will ſtill be the ſame.

None of our Leagues and Treaties, made, either with the Houſe of *Burgundy*, or with the Houſe of *Auſtria*, ſince the Union of thoſe two Houſes, or with the *States General*, ſince their diſunion from both, have ever reſerved to the Crown of *England*, any Annual Payment, Fee-Farm, or Conſideration for their liberty of Fiſhing in our Seas. A certain Sum was never agreed, an uncertain one could never be demanded. And yet Sir *John Boroughs*, in his Book of *The Sovereignty of the Britiſh Seas*, ſays, That *Philip* the Second, King of *Spain*, obtain'd of Queen *Mary*, his Wife, Licenſe for his Subjects to fiſh upon the North Coaſts of *Ireland*, they paying yearly for the ſame One thouſand Pounds Sterling; which was accordingly paid into the Exchequer of *Ireland*. But inſtead

of an Authentick Record, he vouches only the hearſay of Sir *Edward Fitton*, Son to Sir *Henry Fitton*, ſometime Treaſurer of *Ireland*, who, he ſays, had often teſtified it. This may the rather be ſuſpected of miſtake, becauſe Mr. *Cambden* relates, how that Queen *Elizabeth* having ſent four Ambaſſadors, whereof one was Principal Secretary of State, and not lightly to be ſuppoſed ignorant of ſuch an Affair, to treat at *Bremen* with the Ambaſſadors of *Denmark*, upon Complaint of that King's forbidding Foreigners the freedom of Fiſhing betwixt *Norway* and *Iſeland*, both appertaining to the Crown of *Denmark:* The Queen's Ambaſſadors openly affirmed, that the Kings of *England* had in no time forbid the freedom of Fiſhing in the *Iriſh* Sea, albeit they were Lords of both Banks.

Annal. Eliz. An. 1602.

The ſaid Mr. *Cambden*, in his deſcription of the North-Riding of *Yorkſhire*, ſpeaking of *Scarborow-Caſtle*, ſays, That the *Hollanders* and *Zelanders* take wonderful Quantities of Herring upon this Coaſt, *Cum veniam prius veteri inſtituto ex hoc Caſtro impetraverint*; Whereas they were wont, by ancient Uſe, to ask leave firſt of the Caſtle. For, ſays he, the *Engliſh* always gave leave to Fiſh, reſerving that Honour to themſelves, but ſlothfully reſigning the Profit to others. But, all this while, he quotes no Authority neither, nor directs us to any Original Record, where we might conſult the plain Truth of the Caſe. Perhaps what he Hiſtorically calls, Asking Leave, was but giving notice of their Arrival, and acquainting the Governor who they were, and what their Buſineſs was upon the Coaſts, leſt, under the diſguiſe of Fiſhermen, Pirats and Enemies might privily hide themſelves. And probably, he, by his Civilities to the Fiſhermen, might make ſome Perquiſits and Profits to his Place, by permitting them, as occaſion required, to dry their Nets aſhore, to fetch Victual or freſh Water from Land, to fiſh within the Havens and Bays, where commonly the beſt fed Fiſh are taken. But 'tis not likely, that the Governor of *Scarborow* had ſo indefinite a Power, as to enable him to give leave, upon bare Asking, without any further Condition or Conſideration, to all Foreigners, to fiſh at pleaſure, within the Royalties of the

the Crown. However 'tis too manifeſt, That no Prince nor State did ever pay to the Crown of *England* any yearly Sum of Money, or other valuable Conſideration, for the Liberty of their Subjects Fiſhing upon the Seas of *England*; for had ſuch Sum been paid, it would have paſſed into the Accompt of the *Exchequer*, as a Branch of the Royal Revenue, and there remain upon Record.

As for the Caſe of my Lord of *Northumberland*, in the Year 1636, that's extraordinary, and will not paſs for a Preſident. The *Dutch* Buſſes were then required by the *Engliſh* Admiral to take Licences from him for Fiſhing in the Northern Seas, and to pay moderate Rates for the obtaining thoſe Licences, which they did, to redeem themſelves from the forcible Moleſtations of a well-appointed Fleet. So that this was the Compulſory Act of private Perſons, not the Voluntary Act of the *States-General*, who were ſo far from conſenting to what was done, that they made Remonſtrances and Complaints of this Proceeding by their Ambaſſadors here in *England*.

And as it appears not by the Records of the *Exchequer*, That any Recompence was given by Foreigners for Liberty of Fiſhing within our Seas, ſo neither does it appear by any the publick Treaties, That the Subjects of any Foreign Prince ſhould ask leave for ſo doing, by Stipulation and Contract, though they were ſure to have it without paying any thing, only, by the bare asking, to keep in memory a perpetual Acknowledgment of a beneficiary Grant derived from the Crown of *England*, as Supream Lord of the Fee. On the contrary, the Treaties caution for a Liberty of Fiſhing, *abſq; licentia*, without any Leave or Licence firſt to be ask'd. And yet *England* has ask'd leave, and covenanted ſo to do, of a foreign Crown. I would not have mentioned this, had it been a Secret, but 'tis a thing publick and in Print. By Treaty made and concluded in the Year 1490, betwixt *Henry* the Seventh of *England* and *John* the Second King of *Denmark*, which Treaty was afterwards renewed betwixt our *Henry* the Eighth and their *Chriſtiern* the Second, *Anno* 1523. it was mutually covenanted, That the Liegemen, Merchants and Fiſhermen of *England*, ſhould Fiſh and Traffick upon the Northern Sea, betwixt

betwixt *Norwey* and *Iſeland*, but under a *Proviſo* of firſt asking leave, and renewing their Licences from ſeven Years to ſeven Years, *de Septennio in Septennium*, from the Kings of *Denmark* and *Norwey* and their Succeſſors; they are the words of the Treaties. But as Navigation enlarged, and *England* grew more opulent in Trade, and potent at Sea, all this is gone into utter diſuſe and diſcontinuance; and the Kings of *England* may with better Right prohibit the Subjects of *Denmark* from paſſing the *Engliſh* Sea or Channel, without ſpecial Licence firſt obtain'd, than the Kings of *Denmark* can, the Subjects of *England* from paſſing the Northern Sea betwixt *Denmark* and *Iſeland*.

V. *Cambd. Annal ad An.* 1600.

There is a Record, which Mr. *Selden* quotes out of a Parliament Role of King *Richard* the Second, is very remarkable. 'Tis a Grant in Parliament of an Impoſition, according to certain Rates and Proportions, upon all Veſſels Paſſing or Fiſhing within the Admiralty of the *North*, *viz.* Upon the Sea Northwards from the Mouth of the *Thames*. The Rates were as follow,

V. *Mar Clauſ.* l. 2. cap. 15. *Rot. Parl.* 2 *Ric.* 2. *art.* 39. *in Schedul.*

1. To take of every Ship, going and coming upon that Sea, Six Pence a Tun for the Voyage.

2. To take of every Veſſel Fiſhing for Herring, Six Pence a Tun by the Week.

3. To take of Veſſels Fiſhing for other Fiſh, Six Pence a Tun for every Three Weeks.

4. Of Ships laden at *Newcaſtle* with Coals, Six Pence a Tun for every Three Months.

5. To take, of all other Ships paſſing the Sea within the ſaid Admiralty, laden in *Pruſſia*, *Norwey*, *Sconen*, or elſewhere in thoſe parts, Six Pence a Laſt for the Voyage.

Some Collect and Infer from hence, (I confeſs, I cannot) That King *Richard*, by Aſſent in Parliament, did impoſe theſe Rates, not only upon Subjects, but Foreigners, for Trading and Fiſhing within the *North-Eaſt* Sea, as part of the Territorial Property of the Crown. Were it ſo, it would be a matter of mighty weight and moment. But 'tis queſtionable, whether thoſe Words of Univerſality, *Cheſcun Nief & cheſcun Veſſeau* (for the Role is wrote in *Norman French*) every Ship and

and every Veſſel, ought not to be reſtrained to Engliſh Veſſels only, and not extended to thoſe of Foreigners. And if extended to Foreigners, ſince the Grant is ſaid to be made, *per l'Advis des Marchands de Londres & des autres Marchands vers la North*, 'tis worthy the conſidering, whether thoſe words, Other Merchants towards the North, are not in like manner to be extended to Foreigners as well as Natives, that is to ſay, to *Hanſeaticks*, and all other Merchants, whether *Engliſh* or others, dwelling or trading towards the North; who having often occaſion to paſs and repaſs the Northern Sea, at that time infeſted with Rovers, adviſed the ſaid Grant, which Word implies a Requeſt or Deſire, ſomewhat more than a bare Conſent. And what was this Impoſt for, which they adviſed might be laid upon all their Ships and Veſſels? The Role tells us expreſly, That it was *pur la garde & tuition du Mier*, &c. for the guard and Security of the Sea and of the Coaſts of the Admiralty of the North, with two Ships, two Barges and two Ballengers, armed and arrayed for War: And 'tis moſt probable, That not the King himſelf, but private Perſons, Commiſſioned from him, undertook, at their own Expence, to Equip and Arm the ſaid Veſſels, for the Benefit of the Merchants, and Security of their Commerce, and by this rated Impoſt to be reimburſed their Charge, and rewarded for their Service. This may be collected from the firſt Article in the Role, where there is an Exception of Ships laden with Merchandizes in *Flanders*, bound for *London*, and laden with Wool and Skins at *London*, or elſewhere within the Admiralty of the North, to be unladen at *Calais*, of which Ships the Six Pence *per* Tun aforeſaid was not to be required. But then it follows, *Les queux Niefs les Gardeins de la dicte Mer ne ſeront tenus de les Conduire ſans eſtre allouez*, The Guardians of the ſaid Sea were not obliged to give Convoy to thoſe Ships, without an Allowance in Conſideration thereof.

So that upon the whole matter, here is nothing that relates to the Dominion of the Sea; for the Impoſition upon the Ships and Merchandiſes was not *Jure Coronæ*, in Right of the Crown, for paſſing over the Diſtricts or Fiſhing within the

the Royalty of it, but *Ratione Oneris*, in Conſideration of a Charge, which ſome perſons ſuſtained; and that by Contract, to preſerve and defend the Freedom and Security of Navigation and Commerce. And it was very juſt and reaſonable, That what was undertaken for a common Good and Benefit, ſhould be ſupported and defrayed by a common Charge and Contribution. The Role does not ſay, That the Impoſt was granted to the King, as an additional Revenue to his Crown, but it was for the Guarders of the Sea, to reimburſe their Expence, and recompenſe their Service. And the Caſe is parallel with this: Suppoſe the *Hamburgers* and other *Hanſeatics* trading to the *Streights*, who have very ſmall or no Convoy of their own, and apprehenſive of the Courſes of the Rovers of *Africa*, the *Turks* and *Moors*, ſhould contract with the King of *France*, or others Commiſſioned from him, to ſupply them with Convoy from the Mouth of the *Streights*, till they are arrived at the reſpective Ports whither they are bound, and in Conſideration thereof to give ſo much a Tun upon every Ship ſo Convoy'd. This would have no relation to any Sovereignty in the Crown of *France* in and over the *Mediterranean* Sea, but would be a particular Contract only, a *Quid pro Quo*, ſomething to be done, and ſomething to be received in Conſideration of ſo doing.

There want not Examples in Hiſtory of thoſe, who have exacted Tribute upon all paſſing certain Seas adjacent to their Territories, and yet not as proprietary Lords of thoſe Seas neither, but only as Protectors and Defenders of the Navigation thereof. Thus the *Romans* impoſed a Tax upon all Ships ſailing in the *Erythræan* or *Red Sea*, towards the Maintenance of a Maritim Force, for the repreſſion of Piratical Excurſions. And the *Athenians* did the ſame in the *Helleſpont*. Thus the Duties in the *Sound*, payable to the Kings of *Denmark*, began at firſt, not on account of any Sovereignty over that Sea, but becauſe thoſe Kings were at the Charge of maintaining continual Fires upon the *Col* and *Anmot*, and floating Tuns or Buoys upon the Sands, as a Direction to Merchants in that dangerous Entrance into the *Baltick*: For which, was antiently paid them at *Cronenburg Caſtle*, in the *Sound*, no more,

Plin. l. 19. & lib. 6. cap. 22.

Demoſth. in Leptin.

more, till new Exactions crept in, then a Roſe-noble for an empty Ship, and if laden, a Roſe-noble more for her Lading. Nor could any refuſe Payment, pretending, that he had an able Pilot, and needed not the Direction of the King's Fires; for 'tis not reaſonable, that the Contumacy of one or more particular Perſons, ſhould fruſtrate or evacuate a publick Benefit.

In the Seventh Year of King *James*, *An.* 1609, a Proclamation was publiſhed of high Importance, inhibiting all perſons, of what Nation or Quality ſoever, not being natural-born Subjects, from fiſhing upon any the Coaſts and Seas of *Great Britain* and *Ireland*, and the Iſles adjacent, without firſt obtaining Licenſes from the King, or his Commiſſioners, authorized in that behalf, and thoſe Licenſes to be renewed yearly. This was the firſt that ever I could meet with of this nature: Not but that particular Fiſhermen of *Diep*, *Calais*, *Bruges*, *&c.* have ſometimes, both before and ſince, taken Licenſes here in *England* for their fiſhing; but then they did it, either as an abundant Caution, or to gain an indefinite Liberty of fiſhing every where, cloſe upon the *Engliſh* Shores, and within the Fryths, Bays, and Havens, without fear of moleſtation; and they did it *ex proprio motu*, without the privity and knowledge of their Sovereigns; and paid nothing for it to the Treaſury of *England*, only gave Fees and Gratuities to the Secretaries, and others, for diſpatch of their Licenſes. But here is a Royal Edict, or Law, by way of premonition to all the Neighbouring Princes and States, together with their Subjects, to take Licenſes of the King, or his Commiſſioners, for fiſhing upon any the Coaſts and Seas of *Great Britain*, the number of their Ships and Veſſels, together with their Tonnage, to be ſpecified, in order to a rateable Compoſition to be paid yearly into the Chequer of *England*. And King *Charles* the Firſt, in the 12th Year of his Reign, *An.* 1636, publiſhed another Royal Proclamation to the ſame Tenour alſo. By which Acts, thoſe two Kings kept up the continual Claim of the Crown of *England*, to a ſole and appropriate Fiſhery in the *Britiſh* Seas, and conſequently to the Sovereignty and Dominion thereof; but neither

ther of thoſe publick Edicts obtain'd, from any of our Neighbours, their due and juſt Effect. Thus ſtands the Caſe of the Fiſhery.

The Reaſonableneſs of a Limited Fiſhing.

And thus I have gone over all the chief Branches of the Sovereignty, and have faithfully related the Matter of Fact, and how the Practice is, and has been, betwixt us and our Neighbours, in reference to them all; not ſo fully indeed, and amply, as I might, but ſufficiently to my purpoſe, who deſign'd not a Volume, but an Abſtract. There is ſtill one thing behind, concerning the Fiſhery, which I ſhall mention, and ſo conclude. 'Tis by way of Temperament or Relaxation, and yet without renouncing any thing; 'tis a *medium* betwixt graſping at All, and holding Nothing; 'tis what would greatly accommodate *England*, if it can be obtain'd, or if a proper Seaſon preſented, for offering at it: I ſay, a Seaſon, or fit Conjuncture. For what in Natural Philoſophy, amongſt Chymiſts, is a juſt degree of heat, neceſſary to the Production of all great and admirable Effects, that in Politicks, amongſt Statesmen, is a fit Conjuncture. The Temperament or Expedient, which I mean, is briefly this: A Limited Fiſhing; not a Licenſed, but a Limited one, without Licenſe. This hath both a Foundation of ſolid Reaſon to ſupport it, and is back'd alſo with Preſidents and Authorities, ſufficient to vindicate it from the Imputation of a new Project. The Reaſonableneſs of it may be thus ſhewn. The Sovereignty of any Sea, and the Right of the ſole Fiſhing in it, are ſo intimately connexed, yea, ſo coeſſential one to the other, that he who Controverts the one, will infallibly Diſpute and Opiniaſtre the other; but he who acknowledges one of them, will by a neceſſary conſequence yield both. And yet 'tis a thing undoubted, and never brought into Queſtion by any; but that every Prince, whoſe Country adjoyns to the Sea, and whoſe Shores are indented with Bayes, Creeks, Havens, and Rivers, has ſome portion of the Sea belonging to him in property, as an acceſſion of the Land, or appendant to it, or rather incorporated with it,

it, like Veins and Arteries, integral Parts of the ſame Body.

The forementioned King *James*, in the ſecond Year of his Reign, *An.* 1604, cauſed a Sea-Chart to be publiſhed, deſcribing all the Coaſts round *England*, by ſtreight Lines, drawn from one Promontory or Foreland to another, and all that was intercepted and included within thoſe Lines, was called the *King's Chambers*, and *Royal Ports*. And in the Proclamation publiſhed the ſame time, and which refers to the ſaid Sea-Chart, they are called, *The Places of the King's Dominion and Juriſdiction*; and all Hoſtilities betwixt Foreigners in War one with another, but in Amity with *England*, forbidden within thoſe Precincts. Our Law alſo makes a conſiderable difference betwixt Havens, Rivers, Creeks, and Bayes, and the *Altum Mare*, or High Sea, for the firſt are reckoned *infra Corpus Comitatus*, as the Law-Phraſe is, Parts and Members of the Counties of *England*; and all Pleas of Contract, and other things done there, are triable by Verdict, and determinable at Common Law. But the Court of Admiralty holds Plea and Conuſance of all things done upon the High Sea, as being out of the Body of any County, and conſequently, from whence no Jury can be returned for Trial of Iſſues.

Vid. ſis Mar. Clauſ. l. 2. cap. 22.

V. Co. Juriſd. of Courts, cap. 22.

If there be no certain Standard in Nature, whereby to aſcertain the preciſe Boundaries of that peculiar Marine Territory, I am now ſpeaking to, which belongs to every Prince in Right of his Land; yet, by Treaty and Agreement, they may eaſily be reduced to certainty. For, as to the Judgment and Opinion of private Perſons, we cannot fetch from thence any true meaſure; for though they all agree unanimouſly, that there is ſomething due of Right, yet they vary in the *Quantum*, or How much. *Baldus* reckons One hundred Miles at Sea, as the Diſtrict of the adjacent Land. *Bodin* affirms it for a received Law amongſt Nations, That the Prince, whoſe Country abuts upon the Sea, ſhould have ſixty Miles Juriſdiction from the Shore, and that it was ſo adjudged in the Caſe of the

Bald. ad L. de rer. Dom.

Bod. de Repub. l. 1. c. 10.

Duke of *Savoy*. Another Doctor will tell us, That ſo much of the Sea appertains to the Land, as far as a Man can ſee from Shore in a fair day. But this will not ſerve our turn: For if a Man may ſee from *Dover* to *Calais*, I ſuppoſe the like may be done from *Calais* to *Dover*, and whoſe ſhall the Sea be betwixt? Therefore, the ſureſt way is, to preſcribe the Limits of Fiſhing betwixt Neighbouring Nations by Contract, and not by the leſs certain meaſure of Territory. For if no Bounds be fixed, how many Inconveniences, and what a licentious Extravagance, may ſuch a Liberty run into? Why may not the *Dutch*, as formerly they have done, dredge for Oyſters upon the Coaſts of *Eſſex*, within the Fiſheries of private perſons, and within Streams and Waters appertaining to particular Mannors, by Grants from the Crown? Why may they not fiſh within the mouth of the *Thames*? Or within our Creeks, Havens, and Rivers, as far as Salt Water flows? Or to the firſt Bridge, if they will pleaſe to ſtop there? Is it reaſonable, that there ſhould be no diſtinction, as to fiſhing, betwixt Native and Alien? Why then do they challenge to themſelves thoſe ſmaller Seas and Inlets within the *Vly* and *Texel*, and all other Streams, which, breaking in at a ſtreight Neck or *Iſthmus* of Land, form *Peninſula's* of Waters, and, in the nature of ſtanding Lakes, are incloſed within the Banks of thoſe *Low-Countries*? The States there farm out the fiſhing of the South Sea or *Zuyder*, and other Streams, to their own People and Subjects, under the Reſervation of a Yearly Rent to be paid therefore, and conſequently exclude all others from it. I hint theſe things, only to ſhew the Reaſonableneſs of a Limited Fiſhing, and as to the Authorities by which it is ſtrengthened; I ſhall touch upon them alſo.

It was anciently Covenanted betwixt the Crown of *Scotland*, and the *Netherlands*, that they ſhould not Fiſh within Fourſcore Miles from the *Scottiſh* Shoars. My Author is *Welwood*, a *Scotch* Lawyer, in a little Tract of his, which

which I have read, *De Dominio Maris*, in the Third Chapter; His words are, *Non poſſum præterire, quod ante Sæculum hoc poſt cruentiſſimam ex occaſionibus Maritimis diſcordiam inter Scotos Batavoſq; res in hunc modum compoſita fuit, ut Batavi impoſterum abſtinerent ab oris Scoticis ad Octuaginta ſaltem Milliaria.* Here the diſtance from the Shoars of *Scotland*, which Foreigners were to obſerve in their Fiſhing, is ſet very large, no leſs than Fourſcore Miles.

In the Second year of King *James*, Commiſſioners were appointed and authorized under the Great Seals of *England* and *Scotland*, to Treat and Conclude an Union betwixt the two Kingdoms. And in the Articles for Regulating Trade betwixt them, it was amongſt other things, mutually agreed, That the Fiſhing within the Fryths and Bays of *Scotland*, and in the Seas within Fourteen Miles diſtance from the Coaſts of that Realm, where neither *Engliſh* nor other Strangers have uſed to Fiſh, ſhould be reſerved and appropriated to *Scotchmen* only. And ſo reciprocally on the part of *England*, *Scotchmen* to abſtain from Fiſhing within the like Diſtances off the Coaſts of *England*. But if *Engliſh* and *Scots*, who, though the two Kingdoms be *ſui Juris* and independent one upon another, are tied together in the ſame Common Bond of Allegiance to one and the ſame Prince, be excluded from Fiſhing within Fourteen Miles from each other Coaſts, how much more reaſonable is it, that Aliens and Foreigners ſhould be obliged to keep the like Diſtances?

Spotſwood's Hiſt. of Scotland, p. 483.

King *James* finding, that his forementiond Proclamation in the Seventh year of his Reign for a licenſed Fiſhing, was not ſeconded by a ſuitable Compliance on the part of the Neighbouring Nations, did about Nine years after, by way of Expedient propoſe a limited Fiſhing inſtead thereof. For thus I find it in a Letter from Secretary *Naunton* to the Lord *Carlton*, Engliſh Ambaſſador at the *Hague*, bearing Date *January* 21th, 1618. He acquaints him, how the King had, by him the ſaid Secretary, deſired of the Commiſſioners of the States, then reſiding at *London*, that they would write to their Superiours,

ours, to Publiſh a Placart, Prohibiting any their Subjects to Fiſh within Fourteen Miles of His Majeſties Coaſts, that Year, or any time after, until Order be taken by Commiſſioners authorized on both ſides, for a final ſetling of the main Buſineſs. And the ſaid Ambaſſador was Commanded to make the like Inſtance and Declaration to the States General in the Name of his Maſter.

I am apt to believe this Diſtance of Fourteen Miles was the rather pitch'd upon, as the regulated Meaſure, which had been agreed upon betwixt the Commiſſioners of both Kingdoms in the 2*d.* of the King, as I ſaid before. I have done with the Authorities; and for the better Elucidation of what I have ſaid, ſhall briefly ſum it up into a fictitious Article ſuppoſed to be made betwixt *England* and *Holland.*

TO Maintain a due Diſtinction betwixt Natives and Foreigners in Fiſhing upon the Coaſts of their reſpective Sovereigns; And to prevent the manifold Inconveniences, which occaſionally ariſe by a promiſcuous and unlimited Fiſhing; 'Tis *mutually Covenanted, Concluded, and Agreed, That the People and Subjects of the* United Netherlands, *ſhall henceforth abſtain from Fiſhing within any the Rivers, Fryths, Havens or Bays of* Great Britain *and* Ireland, *or within the Diſtance of Leagues from any Point of Land thereof, or of any the Iſles thereto belonging; under the Penalty and Forfeiture of all the* Fiſh, *that ſhall be found Aboard any Veſſel doing to the contrary, and of all the Nets, Utenſils, and other Inſtruments of Fiſhing. The like Diſtances, and under the ſame Penalties, to be kept and obſerved by the Subjects of His Majeſty of* Great Britain *and* Ireland, *from any of the Coaſts belonging to the* United Netherlands. *But beyond thoſe Precincts and Limits, That the People and Subjects on both Sides be*

at

at freedom to uſe and exerciſe Fiſhing, where they pleaſe, without asking or taking Licences or ſafe Conducts for ſo doing, and without the let, hindrance or moleſtation one of another. Saving always the Ancient Rights of the Crown of England, *and that nothing herein contained be interpreted or extended to any Diminution or Impeachment thereof, But that they remain in the ſame Force and Vertue, as before this Agreement.*

The Article is Penn'd indifferently on both Sides, and ſo much the better, becauſe the equality of it is an Argument of its Equity; yet I could inſtance in ſeveral benefits, which would redound to *England* from ſuch an Article, were it paſs'd into an Agreement, but they are not proper to be mention'd in this place; and therefore I ſhall here conclude with this brief Apology, That what I have written, is for the Juſtice and Honour of the Government, the Conſervation of the Publick Peace, the Maintenance of an inviolable Amity with our Allies, and is moſt humbly ſubmitted to better informed Judgments.

ERRATA. Page 25. Line 3. *read* 1599.

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